JD–81–03
Baltimore, MD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NEW CONCEPT SOLUTIONS, LLC

and Case 5–CA–30312

FREIGHT DRIVERS AND HELPERS UNION NO. 557
A/W INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

and

FEDERATION OF PRIVATE EMPLOYEES

Party in Interest

and

INTERNATIONAL BROTHERHOOD OF TRADE
UNIONS, LOCAL 713

Party to the Contract

Thomas P. McCarthy, Esq., for the General Counsel.
Stephen D. Shawe, Esq., Arthur M. Brewer, Esq., and
Laura A. Pierson Scheinberg, Esq., for the Respondent.
James F. Wallington, Esq., for the Charging Party.

DECISION

Statement of the Case

C. RICHARD MISERENDINO, Administrative Law Judge. This case was tried in Baltimore, Maryland on October 30, 31 and November 1, 18 and 19, 2002. In October 2001, the Respondent, New Concept Solutions, LLC, (NCS) was awarded a contract through competitive bidding for the releasing and loading of motor vehicles onto car carriers and rail cars at the General Motors Corporation (GM) Baltimore Assembly Plant, Baltimore, Maryland.[1] For over 44 years, this work had been performed at the Baltimore assembly plant by the Leaseway Motorcar Transport Company (Leaseway). For 35 years, the Leaseway employees at the Baltimore assembly plant were represented for collective-bargaining purposes by the Freight Drivers and Helpers Union No. 557 A/W International Brotherhood of Teamsters, AFL-CIO (Union or Teamsters).

At the time NCS was awarded the GM contract it had only three employees, all of whom were managerial. A precondition of the contract awarded to NCS was that its workforce had to

[1] Under the GM contract, NCS would takeover the yard work effective January 1, 2002.

be unionized. In December 2001, NCS hired 12 new employees. No Leaseway employees were hired. A few days after the 12 new hires began orientation and training, NCS recognized the Federation of Private Employees (FOPE) as its employees' exclusive representative for collective-bargaining purposes and entered into a collective-bargaining agreement. About two months later, FOPE withdrew as the exclusive bargaining representative of the NCS employees. A short time later, NCS recognized the International Brotherhood of Trade Unions, Local 713 (Local 713) as its employees' exclusive representative for collective-bargaining purposes and signed a collective-bargaining agreement with Local 713, which effectively was the same as the FOPE contract.

The amended complaint alleges that the Respondent violated Section 8(a)(3) of the Act by refusing to hire former Leaseway employees because of their Teamsters membership in order to avoid a successorship obligation to recognize and bargain with the Union and to avoid paying the Union wage scale; that the Respondent violated Section 8(a)(2) of the Act by prematurely recognizing and providing unlawful assistance to FOPE and by providing unlawful assistance to Local 713; that the Respondent violated Section 8(a)(3) of the Act by executing a contract with FOPE and Local 713 containing a union security clause and dues checkoff provisions; that the Respondent violated Section 8(a)(1) of the Act by admonishing its employees not to talk to the Teamsters, by telling them that it had hired an off-duty police officer to protect them from the Teamsters, by telling them that the Teamsters put Leaseway out of business with higher wages and that it could afford to operate only because it was not paying Teamsters' wage scale, and by discouraging employees from contacting the Steelworkers Union and telling them that it wanted some control over which union represented its employees; that the Respondent violated Section 8(a)(5) of the Act by refusing to bargain with the Teamsters and by making unilateral reductions in wages, as well as other unilateral changes in terms and conditions of employment.

On the entire record, including my observation of the demeanor of the witnesses, as well as my credibility determinations based on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole, and after considering the posthearing briefs filed by the General Counsel, the Respondent, and the Charging Party Union,[2] I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a limited liability corporation, provides transportation and logistics services to customers in the automotive manufacturing industry with an office and place of business in Baltimore, Maryland. Since January 1, 2002, in conducting business at its Baltimore, Maryland facility, the Respondent has purchased and received goods valued in excess of $50,000 directly from points located outside of the State of Maryland.

The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. The Respondent also admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. The Respondent further admits and I find that FOPE and Local 713 are labor organizations within the meaning of

[2] A notice of hearing was served on FOPE and Local 713, and their respective officials, Ronald Borges and Steven Maritas, were subpoenaed as witnesses, but neither appeared at trial.

Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. *Leaseway*

The GM Baltimore assembly plant produces Chevy Astro vans. As the vehicles come off the production line, they are released to the releasing agent, who processes the vehicle and ships it to the appropriate destination. (Tr. 141) The releasing agent is responsible for bringing the units, or Chevy Astro vans, into the yard where it is determined if the vehicle is to be delivered by rail or truck. If the vehicle is to be delivered by truck, a "driveaway" employee drives the vehicle from the plant to the yard where it is tagged and then taken to an area, where the truck drivers, or "truckaways," load the vehicle onto their rigs. If the vehicle is to be delivered by rail, the driveway takes the vehicle to the yard where it is tagged and then to the rail loading bays, where the vehicle is loaded onto a rail carrier. (Tr. 146, 448.)

Leaseway performed the yard and truckaway work for General Motors at the Baltimore assembly plant for over 44 years. (Tr. 530) For 35 years, the Leaseway employees were represented by the Teamsters under a collective-bargaining agreement. (G.C. Exhs. 3 & 5.) Specifically, the Teamsters represented the truckaway (big rig drivers), mechanics, and driveaways (take unit from plant), as well as the yard personnel, who also did the rail-loading and unloading. (Tr. 448.) Jack Hamm was the Teamsters shop steward for the drivers and John Moe was the Teamsters shop steward for yard personnel (Tr. 456)

B. *NCS*

NCS was formed as a non-asset based business in March 2001 by David Johnson. (Tr. 886; G.C. Exhs. 7-16.) In July 2001, his father, Charlie Johnson, became actively involved with the Company. (Tr. 917.) Charlie Johnson started in the car hauling business in 1985. He eventually operated a nonunion company known as Active Transportation Company, and acquired another trucking company known as Safety Carrier, Inc. Active Transportation was organized by the Teamsters two years after it began operating. Safety Carrier had a collective-bargaining agreement with the International Association of Machinists (Machinists) at the time it was acquired. (Tr. 149.)

From 1995 – 2000, Charlie Johnson served on the Employer Bargaining Committee for the National Master Automobile Transporters Agreement with the International Brotherhood of Teamsters and Local Unions covering Eastern Area Truckaway, Driveaway, Yard and Shop personnel. (Tr. 40.) Charlie Johnson's company, Active Transportation, as well as Leaseway Motor Transport Company were parties to the master agreement.

In 1999, Charlie Johnson learned that GM was soliciting bids from nonunion competitors of Active Transportation, which according to Johnson placed his company at a competitive disadvantage because he was required to pay his drivers at the Teamsters wage rate. (Tr. 47, 183; G.C. Exh. 6.) In January 2001, at an industry meeting in Detroit, Charlie Johnson sought to persuade the Teamsters to "cost-down" the wage rate under the master agreement to $15 an hour in order to make Active Transportation, and other Teamsters organized truck carriers, more competitive with the nonunionized truck companies. The Teamsters rejected his request. In July 2001, Charlie Johnson sold his ownership interest in Active Transportation and by letter, dated July 27, 2001, advised the chairperson of the Employer Bargaining Committee that he was relinquishing his seat on the employer bargaining committee. (Attachment to R. Exh. 1.)

C. Preparing to Bid for Leaseway's Work

In 2001, David Johnson prepared an alternative "cost opportunity" proposal to present to General Motors, whereby a new company, New Concept Solutions, would receive, release and deliver cars and trucks. (G.C. Exh. 17; Tr. 59.) The NCS proposal projected that GM would save an estimated $10,000,000 per year on its plant releasing and rail loading/unloading "using an AFL-CIO recognized workforce (where receiving and vehicle staging is not currently accomplished by UAW employees) and to work to develop lane building opportunities to increase velocity thus reducing average delivery times by utilizing Independent Contractors to provide haul away dealer direct delivery." (G.C. Exh. 17.) David Johnson included this language in the proposal because GM told him that the work force had to be unionized. (Tr. 890)

In May 2001, David and Charlie Johnson, accompanied by a GM representative, toured the GM assembly plants located in Linden, NJ, Orion, MI, and Baltimore, MD in anticipation of NCS making a bid for the yard work, which at the time was performed by Leaseway at all three locations. (Tr. 65, 889–890.) On May 31, David Johnson made his proposal to takeover the yard work at the GM Baltimore assembly plant.[3] After that, David Johnson met with the GM representatives to discuss his proposal in June and in October. (Tr. 949) He also spoke to the GM representatives on the phone at least once a month until October, at which point the frequency of their phone conversations increased. (Tr. 950.) At all times, it was made clear to David and Charlie Johnson that NCS was required to have a unionized workforce in order to obtain and keep the GM yard work. (Tr. 112.)

D. NCS Receives Contract for the Yard Work at GM Baltimore Assembly Plant

In late October, WARN notices were given to the Leaseway employees advising them that Leaseway was terminating business at the GM Baltimore assembly plant as of December 31, 2001. (Tr. 466, 503.)

By letter, dated November 21, NCS was officially notified that it had been awarded the releasing and rail loading, effective January 1, 2002. (G.C. Exh. 20.) Under its new contract with GM, NCS was also responsible for the truckaway dispatch operation. NCS would solicit rates for the truckaway work from independent contractors, provide them to GM, who would select the lowest bidder to do the truckaway work. (Tr. 94, 919.)

E. The November 29, 2001 Meeting with GM and the UAW

The United Auto Workers of America, Local 239, (UAW), represents approximately 1500-1600 assembly line workers at the GM Baltimore assembly plant. In late November 2001, a plant newspaper jointly published by GM and the UAW notified the GM employees that NCS, whose employees were represented by the Machinists, was going to take over the yard work at the plant. (G.C. Exh. 40; Tr. 415, 477.)[4] A meeting was held on November 29, 2001, to

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[3] At the time, David Johnson was the only employee of NCS. (Tr. 63.)

[4] At trial, the Respondent's counsel objected to the document as hearsay. The General Counsel argued that it was admission of a party opponent and therefore excepted from the hearsay rule. However, he also stated that it was not being introduced for the truth of the matter asserted. (Tr. 414-418.) The document was admitted. I found, and I find, that it is neither hearsay nor an admission by a party opponent. The document reflects that the UAW members were told by someone that NCS would have Machinists represented employees. It does not

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introduce NCS, and to answer questions from the UAW representatives. (Tr. 420.) Charlie and David Johnson were present for NCS, along with Charlie Ross, NCS Operations Manager, and Lisa Lunsford, a consultant retained by NCS to facilitate the hiring and training of NCS employees.[5]

Charlie Johnson introduced himself and reviewed his background in the trucking industry. According to Charles Miller, a former UAW shop chairman, who attended the meeting, Charlie Johnson told the group that the NCS employees would be represented by the "Machinists," although he could not recall which Machinist local. (Tr. 209.) The current UAW shop chairman, James Basilone, testified that Johnson told the group that the independent drivers doing the truckaway work would be represented by the Machinists and that these drivers would drive out to 150 miles from the plant. (Tr. 422.) Basilone's testimony is consistent with Charlie Johnson's testimony that he told everyone at the meeting that the drivers doing the truckaway work up to 150 miles would be represented by the Machinists. (Tr. 74.)[6] I therefore credit Charlie Johnson' testimony on this point.[7]

F. *NCS Contacts MOED*

The City of Baltimore's Mayor's Office of Employment Development (MOED) operates under the mandates of the Federal Workforce Investment Act. (Tr. 349) Its mission is to help Baltimore City residents find employment, change careers or upgrade in training. It serves all residents, including people with "barriers," like criminal backgrounds, who are much harder to employ. MOED customers are workers and employers. It operates four career centers ("one-stops") in Baltimore, which are intake places for individuals seeking employment assistance. Job seekers must register by filling out an application for "core services," which allows them to go into the center and do a self-job search by accessing the automated labor exchange system ("One Line") (Tr. 294.) Once job seekers are entered into the database, MOED will retrieve the job seekers's name by displaying the required skills and experience and provide the job seeker with the employer's contact information (Tr. 295.) There is also a youth center for individuals ages 16-21. These youths, however, must live in empowerment zones, which are federally designated areas housing a large number of economically disadvantaged people (Tr. 295)

MOED also offers training programs:on-the-job training which is provided by the employer and subsidized by MOED, which awards a 50% of wage reimbursement for the trainees (Tr. 406); and employer based training in which the employer can send the trainees to "vendors" (or, schools such as Baltimore City Community College) and 50% of these costs are provided by MOED. If training is required, MOED prepares a customized training alert, which is sent to all the career centers and is also posted in a "public folder." (Tr. 311.) Job seekers interested in training must come to a career center for an individual assessment done by a staff member who reviews any deficiencies the applicant may have, their particular needs and skills, and educational background. (Tr. 312-313.)

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reflect who made that representation nor does it establish that the NCS employees were represented by the Machinist.

[5] At this time, there were only three NCS employees, all of whom were managerial. (Tr. 74.)

[6] Under David Johnson's written proposal to GM, the truckaway drivers were nonunionized independent contractors. (Tr. 74; G.C. Exh. 17.)

[7] Regardless of what Charlie Johnson stated at the meeting, the undisputed evidence shows that he and David Johnson had been told repeatedly by GM representatives that NCS' employees had to be unionized. (Tr. 109-110.) That was a precondition for obtaining the releasing work at the GM Baltimore plant. (Tr. 112.)

There are analogous programs throughout the United States, including Louisville, Kentucky, where Charlie Johnson operated Active Transportation. There, the Urban League has a job training program, similar to MOED's, which is funded by a private industry council. (Tr. 158.) Charlie Johnson utilized the services of the Urban League in Louisville to recruit minorities for Active Transportation. He also engaged the services of similar agencies in Atlanta, GA and San Antonio, TX. (Tr. 159-160.)

On November 15, 2001, David Johnson phoned MOED inquiring about its services. (Tr. 297, 894-895; G.C. Exh. 21, P11, entry note 38.)[8] The call was referred to Susan Tagliaferro, a MOED business liaison, for follow-up.[9] Later that day, she provided Lisa Lunsford, NCS' consultant, with an overview of MOED's services and started to gather information about NCS' business and hiring needs. (Tr. 297; G.C. Exh. 45.) Over the next few days, Tagliaferro and Lunsford spoke on the phone and exchanged e-mails. (G.C. Exh. 45-46; Tr. 298.) Tagliaferro testified that to the best of her recollection she was told by either Lisa Lunsford or Charlie Johnson that NCS was not a union company. (Tr. 299.)[10]

Lunsford provided Tagliaferro with a completed application and job description for a yardman. (G.C. Exhs. 48 and 49.) Lunsford also told Tagilaferro that the facility involved was the GM assembly plant on Broening Highway. (Tr. 306.) Tagilaferro testified, however, that she was unaware that a union represented the Leaseway employees. (Tr. 299.) A meeting was arranged for November 30.

On November 30, MOED officials Edith Brown-Johnson, Deborah Holland and Romella Stevens met with David Johnson and Charlie Ross for NCS. The purpose of the meeting was to discuss arrangements for hiring and training NCS employees. According to David Johnson, he opened the meeting by telling the MOED representatives that NCS was a new company looking to hire approximately 15 employees and that the company had received work at the GM Broening Highway plant (Baltimore assembly plant). (Tr. 896.) The MOED staff told Johnson and Ross that job seekers would be located through four career centers, that MOED would advertise the job opportunity internally, and that those who came to the career centers could then apply for the positions. (Tr. 386.) Brown-Johnson reviewed NCS' customized training application, which specified the number of people to be trained, the starting wage and benefits, and the prerequisites for hiring (Tr. 387; G.C. Exh. 48.) A valid driver's license was required, driving experience was helpful, but a high school degree was not required. Instead, an applicant needed only 8th grade reading and math skills. David Johnson requested that a one-day mass interviewing session be held at one of MOED's career centers. (Tr. 385.)

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[8] David Johnson initially contacted the Urban League in Baltimore to facilitate the hiring and training of NCS employees. The Urban League would not act on Johnson's request because NCS did not have a written contract with GM in hand at the time. (Tr. 894.) Charlie Johnson's contacts with the Urban League in Kentucky referred David Johnson to MOED. (Tr. 836, 894.)

[9] MOED's records indicate that Charlie Johnson, not David Johnson, initially contacted the MOED offices to inquire about recruiting and training support. (G.C. Exh. 62.)

[10] Tagliaferro may have confused Charlie Johnson with David Johnson. She nevertheless credibly testified that in the normal course of business she typically asks an employer if it is a unionized employer. (Tr. 299.) The response could affect how MOED processes a request for hiring and training assistance. She testified that "if the company says that their workers are represented by a union, in order for us to move forward with an agreement with them to train people, then we would ask for a written concurrence from the union, and the union would have 30 days to respond." (Tr. 300.)

During the meeting, Edith Brown-Johnson asked David Johnson if NCS was a union company and he responded, "No." (Tr. 389, 896.)[11] Deborah Holland, a MOED workforce development specialist, testified that David Johnson mentioned that NCS was taking over a company. She testified that when she asked him if NCS was "going to hire any people from the old company," David Johnson stated, "No." (Tr. 678, 685.)[12] David Johnson testified that he did not tell Holland or anyone else at the meeting that NCS would not hire any former Leaseway employees. (Tr. 896.) However, he did not deny that one week later Holland asked him the same question and he told her again that NCS would not hire any Leaseway employees.

The initial training budget for NCS was approximately $38,000 of which 50% or $19,000 would be subsidized by MOED.[13](G.C. Exh. 67; Tr. 391.) The pre-screened applicant interviews were scheduled for December 7, 2001 at MOED's Eastside career center. After the November 30 meeting ended, Brown-Johnson prepared a customized training alert (G.C. Exh. 50) that was e-mailed to the career centers and faxed out to MOED's partners. It was not placed in any local newspapers. MOED pre-screened the NCS applicants. (Tr. 313; G.C. Exh. 51.)

G. *The Teamsters Demand Recognition and Request to Bargain*

By letter, dated November 30, 2001, Charlie Johnson notified Teamsters' Business Representative John McLain that NCS "was awarded the releasing and haul away business as a logistics provider for General Motors" effective January 2, 2002. (G.C. Exh. 23.) GM asked Johnson to send this letter because the Teamsters planned a demonstration at the GM plant on December 4, 2001. (Tr. 91.)[14]

At 4:05 p.m. on December 4, McLain unsuccessfully attempted to call Charlie Johnson at 702-638-8080, the number that Johnson gave in his November 30 letter. McLain testified that he left a message with a person who answered the phone asking Johnson to call him. (Tr. 445.) Charlie Johnson testified that he never got the message and McLain testified that he never got a return call. On December 5, McLain faxed a letter to Johnson which, in relevant part, stated:

> You are a signatory of a Work Preservation Agreement under the National Master Automobile Transporters Agreement Bargaining Unit. Your November 30, 2001 letter claims that some business entity you are Chairman of named "New Concept Solutions" has been "awarded the releasing and haul away business as a logistics provider for General Motors."
>
> Based upon this information, Teamsters Local 557, with the consent and participation of Teamsters National Automobile Transporter

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[11] Edith Brown-Johnson further testified that neither she, nor Debra Holland or Romella Stevens were told that they would be recruiting applicants for jobs currently held by Teamsters represented employees. (Tr. 389.)

[12] Holland further testified that she later asked the same question when they were interviewing applicants at the Eastside Career Center and was told that NCS was not going to hire Leaseway employees. (Tr. 683.)

[13] The budgeted amount was changed to approximately $34,000 reflecting a $1.00 reduction in the starting wage. (G.C. Exh. 68.)

[14] The Teamsters held a mass demonstration on December 4, 2001, to bring attention to the fact that the Leaseway employees were going to lose their jobs. (Tr. 446.) See, *Teamsters Local 557 (General Motors),* 338 NLRB No. 133 (2003).

> Industry Negotiating Committee (TNATINC), demands that you and your new entity meet and bargain regarding the mandatory subjects of bargaining relating to those NMATA bargaining unit employees affected by your purported award of General Motors releasing and haul away business. Such meeting must take place in Baltimore on either December 10, December 13, 14 or December 17, 18 or 19.

(G.C. Exh. 24.)

McLain sought to negotiate with NCS on behalf of the Leaseway employees because it thought that Charlie Johnson still owned Active Transportation Company and that he was still a signatory to the national master agreement. (Tr. 466-468, 470.)

By letter, dated December 6, 2001, Marty Klaper, Esq., whose law firm represented NCS at the time, advised McLain that as of July 26, 2001, Charlie Johnson no longer had an ownership interest in Active Transportation Company and that he was no longer a member of the National Automobile Transportation Industry Negotiating Committee. (R. Exh. 1.) Klaper further advised that Johnson had no obligation to engage in bargaining with the Teamsters.

H. *NCS Screens & Hires Its Workforce*

On December 7, 2001, NCS interviewed several employees at the MOED Eastside Training Center. (Tr. 393.) Deborah Holland assisted in processing the pre-screened applicants. The actual interviews were conducted by David Johnson and Charles Ross. By the end of the day, NCS had selected 12 prospective employees. (Tr. 395, 901.) Nine African Americans, two Caucasians, and one Hispanic.[15]

I. *Leaseway Employees Seek Jobs With NCS*

On Friday, December 14, 2001, a MOED Rapid Response team met with the Leaseway employees, to discuss unemployment, searching for jobs, and training.[16] James Holland, Sr., a long-time Leaseway employee, testified that he was on his way to this meeting when he was stopped by Leaseway Supervisor Howard Huff, who told him that he wanted to hire some the Leaseway employees for NCS, including Holland's son, James Holland, Jr., who also worked for Leaseway. (Tr. 525.) Holland, Jr. likewise testified that Huff asked him if he would be interested in working for NCS, if he could get him a position. Holland, Jr. told Huff, "Yes, even if there was a pay cut." (Tr. 511.) Holland, Jr. further testified that when he asked Huff if the union would be involved and if other Leaseway employees would be hired, Huff stated that he did not know, but that he would get back to him.

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[15] Around the same time, Charlie Johnson hired Leaseway Supervisors Walter Shuebel, Howard Huff and his wife, Sharon Huff, to work for NCS. (Tr. 93.) Howard Huff, who supervised Leaseways' yard operations and the driveaway program, was hired to supervise the NCS driveaway and yard workers. Sharon Huff, a Leaseway yard worker, would be responsible for NCS shuttle service. (Tr. 840-842.)

[16] Ironically, the MOED Rapid Response team was unaware that its counterpart, the MOED recruiting and training specialists, were assisting NCS with recruiting, screening, hiring, and training the employees that would take over the jobs being performed by the Leaseway employees. Likewise, the MOED recruiting and training personnel, i.e., Tagliaferro, Holland, and Brown-Johnson were unaware that the MOED Rapid Response personnel were working with the Leaseway employees, who were going to lose their jobs. (Tr.374, 389.)

Union Shop Steward John Moe also asked Huff on December 14 if NCS was going to hire Leaseway employees. (Tr. 480-481.) Moe testified that when he asked Huff about the possibility of employment with the new company, Huff looked at him strangely and replied that the pay scale was going to be about $13 an hour. Moe responded that he would rather make $13 an hour than nothing and that some of the other employees may also be willing to work for that wage. (Tr. 482.) Huff told Moe that he would talk to Charlie Johnson and get back to him.

A short time later, Teamster Business Representative John McLain also asked Huff if NCS was going to hire any Leaseway employees. (Tr. 456.) Huff told him that he did not know, but that he would find out. In the meantime, McLain told Moe to make a list of all the Leaseway employees who were interested in working for NCS. (Tr. 457.) On Wednesday, December 19, Moe asked Huff again if NCS was going to hire any Leaseway employees. Moe testified that Huff told him "that Mr. Charlie Johnson was bringing his own people and didn't want to hire any current employees of Leaseway." (Tr. 483.) Huff later made the same statement to McLain. (Tr. 456.) Moe nevertheless followed McLain's instructions. He polled the employees and made a list of 16 Leaseway employees who were interested in employment with NCS. (Tr. 483; G.C. Exh. 74.) Four of those employees were African American.[17] On December 28, 2001, the last day of Leaseway's operation, Moe gave the list to Huff.

J. *Charlie Johnson Calls Ron Borges*

Ron Borges was the National Director of the Federation of Private Employees (FOPE), an AFL-CIO affiliated labor organization. He formerly was employed as the vice president of labor relations for Ryder Trucking Company. He, along with Charlie Johnson, was a member of the Employer Committee of the National Automobile Transporters, Labor Division, under the national master agreement. (G.C. Exh. 3, page 116.) The two got to know each other fairly well by working on the bargaining committee and by socializing together. (Tr. 171.)

Ryder eventually was bought by another carrier. Borges lost his job. According to Johnson, he ran into Borges in November 2001 coming out of a trucking company owned by another friend of Johnson. Borges told Johnson that he was working for a union. (Tr. 172-173.) According to Johnson, Borges told him that he represented this other friend's employees and told Johnson "if you ever do anything would you let me come in and talk to your people." (Tr. 173.) Johnson replied, "Yes," and Borges told him "well talk to John because John can tell you that we have a good relationship and so forth." (Tr. 173.)[18]

According to Charlie Johnson, on December 17, he phoned Ron Borges and "I told Ron I was coming in and that if he wanted to he could come in and talk to the people on the 18th." (Tr. 174; 98.) Johnson testified that Borges actually drove from the Detroit, Michigan area to Baltimore, MD that same day, arriving the night of December 17. He phoned Johnson when he had arrived at the hotel. (Tr. 174.) In the meantime, Charlie Johnson had phoned NCS' Baltimore legal counsel, Michael McGuire, Esquire, who testified that Johnson told him that "AFL-CIO affiliate Ron Borges, was going to be in town and that Mr. Johnson was going to allow him, Borges, access to his employees and would we please get that draft contract out and fill in the name of that union just in case the employees were interested in the union."[19] (Tr. 703.)

[17] James Holland, Jr., Harry Smith, Al Sturtevent, and Norman Yuille. (Tr. 484.)

[18] Johnson testified that he did not mention the Baltimore operation to Borges because he was not sure that he had the contract at the time, but then contradicted himself by stating, "I told him it looked promising but I didn't know." (Tr. 173.)

[19] McGuire testified that prior to December 17, his law firm received a rough draft of a

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K. *Orientation Begins and FOPE Solicits Members*

In the meantime, on December 17, NCS began orientation and off-site training for its newly hired employees at the MOED Eastside Training Center. (Tr. 239.) The first few days consisted of orientation during which the new hires watched video tapes on releasing, rail loading, and parking cars, as well as how to secure vehicles to rail cars. (Tr. 240; 902.) Training began the second week at the Bethel AME Church in downtown Baltimore. Half the day was spent in class and the other half was spent on a gravel parking lot where the new employees drove rented vehicles and practiced parking them. (Tr. 249; 630; 903.) Orientation and training were mandatory and the employees were paid for the time (Tr. 631)

On the second day of orientation, Charlie Johnson spoke to the group of new hires. Karen Ayers, who was an NCS trainee, testified that Charlie Johnson gave a speech about the Company and his philosophy. Johnson also told the trainees that their starting wage would be $11.00 an hour, which surprised Ayers and the others because MOED had told them it would be $15.00 an hour. (Tr. 240.) He also told them that it was possible that they might receive $11.50 an hour. (Tr. 280.) At the end of the speech, Charlie Johnson told the group he wanted to them to meet an old friend, who he had worked with previously, that he was a really nice guy, and that everyone should give him their full attention. (Tr. 241, 270; 632.) Johnson left, and Ron Borges came in the room. (Tr. 174-175.)

Borges told the NCS trainees that he was a union representative and what his union could do for them. He told the trainees that he could do better than the $11 an hour that Charlie Johnson was going to pay them. (Tr. 243; 632-633.) Karen Ayers testified that Borges proposed asking for $11.50 an hour and for $.50 increases every year. (Tr. 244.) He passed out authorization cards to join the union, but did not tell them the purpose of the cards. According to Karen Ayers, Borges told the trainees that "it would be best if everyone [joined]" and that "he would like to get things taken care of quickly because he needed to leave town soon." (Tr. 243.) Every trainee signed an authorization card. Borges collected the cards and the group took a lunch break.[20]

While the trainees were taking a break, Borges met with Charlie Johnson. (Tr. 244-245; 634-635.) About 30 minutes later, the trainees returned from break and Borges told them that he had gotten them $11.50 an hour and a $.50 raise in January, and that they would discuss other items later. (Tr. 245; 636.) Charlie Johnson, however, denied that he discussed wages with Borges at this point. (Tr. 101, 102.) He testified that during the break Borges told him that he had signed cards, but Johnson did not look at the cards. Instead, he told Borges he wanted to call his attorney.

While Borges was updating the trainees, Charlie Johnson phoned Attorney McGuire, who testified that Johnson "called us mid-morning on the 18th and said that Borges had made a verbal demand for recognition and that … could we arrange for a neutral to do a card check." (Tr. 703.) Charlie Johnson and Borges then drove separately to the law firm of Shawe and

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collective-bargaining agreement from NCS' Indianapolis counsel, Marty Klaper, Esq., to have ready in the event that NCS' work force became unionized. (Tr. 703.)

[20] At trial, Ayers testified that Borges collected the cards after the break. (Tr. 262-263.) On cross-examination, she was shown her pretrial affidavit that stated that the cards were collected before the break. Ayers stated that the affidavit was probably correct because it was made closer in time to that actual event. (Tr. 288-289.)

Rosenthal for a card check. In the meantime, McGuire arranged for Charles Siegal, Esquire, in the law firm of Blades and Rosenfeld, to serve as a neutral. (Tr. 704.) Around noon on December 18, Charlie Johnson, David Johnson, and Ron Borges arrived at McGuire's office. A short time later, Siegel joined them. Borges and Siegel went into a conference room to check the cards against a list of employees and their W-4 forms. When they came out, Siegel signed a form certifying that a majority of the NCS trainees had signed cards designating FOPE as their exclusive collective-bargaining representative. (R. Exh. 6; Tr. 704.)

After the card check and recognition, Attorney McGuire gave Borges the typed draft of the collective-bargaining agreement he previously prepared with FOPE's name already typed in the contract. (Tr. 706.) According to McGuire, "Borges seemed to be at least familiar with what the basics were that the – what the package was that the company was already offering the employees, the wages and the benefits, and so forth." (Tr. 707; 731.) As they went through the draft contract Borges proposed some changes to the probationary period, vacation, and wages, and a tentative agreement was reached. McGuire finalized the contract on December 19, Charlie Johnson signed it on December 20,[21] it was mailed to Ron Borges, who signed and dated it December 31, and mailed it back to McGuire. (G.C. Exh. 4; Tr. 708.) McGuire testified, however, that the parties agreed the contract would be effective December 20, 2001. (Tr. 737.)

On December 19, while McGuire was preparing the final contract, Borges met with the NCS trainees again at the MOED Eastside Training Center to tell his new members what was in the new contract. (Tr. 246.) By a show of hands, the group unanimously voted to accept the contract. (G.C. Exh. 43(b); Tr. 281-282.)

On December 28, 2001, several NCS employees began working at the GM Baltimore assembly plant, at which time Leaseway turned over its inventory to NCS. (Tr. 103-104.) Among those employees were Supervisors Marty Weathers and Howard Huff, Office Manager Sharon Huff, and new hired Yardman Alan Reardon.

L. *The Teamsters Handbill the GM Facility*

On December 31, 2001, several Teamsters representatives stood outside the Holabird Avenue gate of the GM Baltimore assembly plant (near the entrance for the NCS employees) attempting to pass out Teamsters materials to the NCS employees as they entered the gate to the plant. (Tr. 582-583; G.C. Exh. 80.)

On January 2, 2002, Teamsters' Vice President William Alexander, Business Representative John McLain, and Shop Stewards Jack Hamm and John Moe again distributed Teamsters literature outside the gate near the entrance for the NCS employees. Around 1 p.m., Alexander and Teamsters' attorney, Michael Wallington, Esq., entered the parking lot of the GM facility in an attempt to speak to NCS employees. As they spoke to a truck driver, Charlie Johnson drove up in a car and asked them if they had permission to be on the property. (Tr. 585; 844-845.) Wallington asked Johnson if he had permission to be on the property, and Johnson replied that he had a signed lease. Johnson told Alexander and Wallington that if they wanted to be on the property they needed his permission. Alexander stated that he attempted to call Johnson, but never received a return phone call. (Tr. 586.) Johnson told the two men that he had nothing to do with the Teamsters and asked them to leave the property, which they did.

[21] At the time Charlie Johnson signed the contract, NCS had not started operating at the GM Baltimore assembly plant and the NCS trainees were still in orientation. (Tr. 102-103.)

Following this incident, Charlie Johnson hired security guards to monitor the parking lot. The guards began working on January 3, and remained on site for approximately 30 days. (Tr. 847.) Around the same time, Charlie Johnson held a meeting of all NCS employees in the lunch room. Karen Ayers testified that Johnson told the group to ignore the Teamsters and that he had hired an off-duty police officer to patrol the yard for the employees' protection. (Tr. 256-257.) She further testified that Charlie Johnson told the employees that the Teamsters had put Leaseway out of business because of the high wages the company had to pay and that Charlie Johnson could not afford to run the company like that, which was why they were receiving $11.50 (Tr. 257.) Johnson denied making the latter statement.

The Teamsters continued leafleting at the GM Baltimore assembly plant on and off through March. When they were not leafleting, three or four former Leaseway employees would observe the NCS employees working from a vacant lot across the street from the GM facility. (Tr. 567, 570.)

M. *The Teamsters Learn That FOPE Represents The NCS Employees*

On January 10, 2002, Teamster Business Representative John McLain visited the GM Baltimore assembly plant office complex where he encountered Howard Huff. McLain began questioning Huff in attempt to find out where NCS got its new employees and who represented them. (Tr. 460-462.) Huff eventually told McLain that the employees had been referred by MOED and that they were members of FOPE.

On February 4, 2002, Teamsters President, William Alexander, walked into MOED's offices looking for Tagliaferro and Brown-Johnson, who agreed to meet with him even though he did not have an appointment. (Tr. 330, 396.) According to Tagliaferro, Alexander identified himself as a Teamsters' Local President and told them that he had some questions and concerns about MOED recruiting employees for NCS. (Tr. 330-331.) Alexander asserted that former Leaseway employees had been excluded from the hiring process and demanded information regarding the recently hired NCS employees. Tagliaferro and Brown-Johnson told Alexander that could not release any information without authorization from the City of Baltimore's attorney.

N. *NCS Seeks to Supplements the MOED Contract*

Tagliaferro and Brown-Johnson also did not tell Alexander that NCS was in the process of filing additional positions. (G.C. Exh. 61 and 62.) They also did not tell him that MOED had approved NCS' request for more recruits and training. (Tr. 396; G.C. Exh. 65.) On February 8 and 13, interviews were conducted at the MOED Career Center and seven more employees were hired. (Tr. 108; 333-334, 397; G.C. Exh. 52.) As a result of Alexander's complaint, however, MOED did not subsidize the training of these individuals. (Tr. 399.) The new hires nonetheless began working for NCS on February 18-20. (Tr. 400.) In early March, NCS notified MOED that it needed to hire an additional three employees, even though it understood that MOED would not subsidize the training. (Tr. 401; G.C. Exh. 69.)

O. *FOPE Is Forced to Withdraw*

In late January 2002, NCS' attorneys in Baltimore received a phone call from Borges stating that Article 20 proceedings within the AFL-CIO were being brought by the Teamsters challenging the representational status of FOPE. (Tr. 710) On January 29, 2002, a meeting was held at AFL-CIO headquarters in Washington, DC concerning FOPE's representational status at NCS. (Tr. 595.) The meeting was attended by Teamsters officials Alexander and McLain, and

Teamsters lawyers Wallington and Neil Ditcheck, Esq. (Tr. 595.) Borges and FOPE's attorney, Kathleen Krieger, Esq. also attended. FOPE was asked to provide a copy of the collective-bargaining agreement with NCS and a copy of the card check agreement, which it refused to do. (Tr. 596.) Eventually FOPE was made to withdaw as the exclusive bargaining representative of the NCS employees.

In early February, Charlie Johnson advised McGuire that he had learned from Borges that FOPE had to withdraw as the exclusive bargaining representative for NCS employees as a result of the AFL-CIO proceedings.[22](Tr. 710, 874.) Charlie Johnson was concerned because GM had told him at every single meeting that NCS must have a union. (Tr. 109 -111.) He therefore asked Attorney McGuire if he could find a non-AFL-CIO union that could represent the NCS employees. McGuire told him that he would look into it. (Tr. 711.)

In the meantime, the NCS employees were informed that FOPE no longer represented them. Charlie Johnson spoke to the NCS employees in an attempt to allay their concerns about not having a union representative. (Tr. 864.) Former NCS Employee Alan Reardon testified that he and a few other employees discussed the matter with Johnson in the yard. (Tr. 641.) He testified that Charlie Johnson told them "that he never really thought we needed as far as working relationship with management and union he didn't feel that we really ever needed a union contract because he planned on being fair to us at all times." (Tr. 641.) Reardon further testified that Johnson told them "it would work out better for other contracts that they were going to try to get in the future if we were union organized." (Tr. 641.) Reardon stated that he "offered at that point to call in the United Steelworkers and have them come and pitch us representation because I was United Steelworkers on the West Coast for like 20 years and it would only take a couple of phone calls to get somebody down there."[23] (Tr. 641.) Charlie Johnson dismissed the idea. According to Reardon, Charlie Johnson told him that "[h]e wanted to have some control over what union came in and he had some ideas and he would handle it." (Tr. 642.) Johnson denied that he told Reardon that he would like to have some control over which union came in. (Tr. 864.) He testified that he responded to Reardon by telling him that there was a problem using an AFL-CIO union and that he was "thinking about using somebody else." (Tr. 864.) He conceded that at the time of the discussion he had already talked to McGuire about finding a non-AFL union to represent the NCS employees and that the "somebody else" that he had in mind was the union that he asked McGuire to find for him. (Tr. 874 - 875.)

P. *McGuire Recruits Maritas*

The third week of February, Attorney McGuire acted on Charlie Johnson's request to find a non-AFL union. He phoned Steve Maritas, a Local 713 Representative, and "asked him whether or not he was interested, his union might be interested, in being introduced to the New Concept employees, and [Maritas] said he was." (Tr. 711.) Shortly thereafter, Maritas met with Charlie Johnson and Attorney McGuire in McGuire's offices. The meeting lasted about an hour. (Tr. 114.) Charlie Johnson testified that "[w]e talked about the fact that FOPE had said they couldn't represent the people there, and I wanted to give him an opportunity to talk with the people to see if the people would want to be a part of this union. He said he would like to have the opportunity to talk with the people." (Tr. 114.) Johnson told Maritas "he could go on the

[22] By letter, dated March 1, 2002, Charlie Johnson was formally advised that FOPE disclaimed interest in representing the NCS employees. (G.C. Exh. 28.)

[23] Reardon further testified that in late January – early February he was told by David Johnson that the Teamsters were going to try to get the NCS employees to sign cards, and stated that NCS would end up going out of business if it had to pay the Teamsters' wage scale. (Tr. 639.)

property and talk to the people." (Tr. 114.)

A few days later, Maritas visited the GM Baltimore assembly plant yard to talk to the NCS employees. Former employee Alan Reardon testified that Maritas told the NCS employees that he had been told about the situation by Borges and that he had come down to pitch the union to the NCS employees. (Tr. 644.) Maritas told the employees that he was not affiliated with the AFL-CIO so there would be no jurisdictional dispute (Tr. 645.) Employee Richard Jenkins testified that Maritas told the employees that "he was here to represent us as a union." (Tr. 957.) Jenkins stated that "[w]e didn't know who he was at the time or what – you know, but prior to that our first union guy that there was leaving, so we thought that this was the replacement, so we never give it any thought." (Tr. 957.) Another employee, Sean Phelps, stated that Maritas spoke to the employees during lunch, telling them that he had heard that they were looking for someone to represent them. (Tr. 791.) Maritas handed out business cards and asked employees to agree to representation. Reardon testified that, "[h]e had a little bit harder time convincing us to sign cards than the other guy."(Tr. 645.) Some of the employees were absent from work that day, and those present decided to wait until everyone was there, before they signed any cards. (Tr. 791-792.) Jenkins also wanted to checkout Maritas' credentials.

The next day, March 12, 2002, Jenkins phoned a friend who dealt with unions, and was told that Maritas was okay. (Tr. 957.) The employees signed Local 713 authorization cards. (Tr. 792; R. Exh. 28.) According to Reardon, while the employees were signing cards there were managers in the office located next to the lunchroom, specifically, Howard and Sharon Huff, Marge Ripkin and Walt Schuebel. (Tr. 647.)[24] Phelps testified that Sharon Huff, David Johnson, and Charlie Ross were present when the employees signed the cards.[25] (Tr. 792.) Employee Alonzo Coleman testified that there were no management officials in the lunchroom when the employees signed the cards. (Tr. 987.) After the cards were signed, Maritas appointed Richard Jenkins as shop steward. (Tr. 648, 968.)

On March 13, Maritas sent NCS a letter demanding recognition as the representative of the NCS employees for collective-bargaining purposes. (R. Exh. 14.) NCS faxed a copy of the letter to its attorneys, who arranged for a card check. On March 15, Maritas and Jenkins met with Attorney Pat Pilachowski, an associate of McGuire, to check the cards. Pilachowski called Attorney Charles Siegal, who met with Maritas and Jenkins to review the authorization cards using the same process followed with FOPE. (Tr. 769, 770, 775.) The results were certified and a recognition agreement was signed that day by NCS. (R. Exh. 15; G.C. Exh. 29.)

Q. *The Teamsters Leaflet the NCS Employees' Automobiles*

Also on March 15**,** the Teamsters were leafleting outside the plant in an attempt to organize the same employees. (Tr. 551, 554.) Teamsters' Shop Steward Jack Hamm arrived first followed by Alexander and a few others. (Tr. 551, 554.) They began placing leaflets on the windshields of the cars parked on the public street by the Quail Street gate. A few minutes later,

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[24] The evidence shows that the managers were in an adjacent office that had a small window (1'6" by 6") that looks into the lunchroom. (Tr. 648.) There is no evidence that any of the managers were watching the employees while they signed the cards.

[25] Phelps also testified that the cards were backdated to March 12. (Tr. 792.) However, Employees Alonzo Coleman and Richard Jenkins testified that they signed cards on March 12, and that no one asked them to back date the cards. (Tr. 981-982; 986.) For this, and demeanor reasons, I do not credit Phelps' testimony on this point.

Charlie Johnson pulled up to the fence by the gate and walked out. He asked Alexander what he was doing and Alexander told him that he wanted an opportunity to talk to his employees. (Tr. 849.) Alexander testified that Johnson replied, "Look, guys, if you want to talk to my men just give me a call and we'll make an appointment…I have no problem with these guys being union if they want to be." (Tr. 602; 848) Alexander testified that he asked Charlie Johnson what had changed his mind, and Charlie Johnson repeated that all they had to do was set up an appointment. Alexander stated that he told Johnson, "I'm asking you right now…I'd like to make an appointment to talk to these people," and Charlie Johnson replied that he would speak with Huff to see what time was best. Alexander testified that he handed Johnson his business card and Charlie Johnson told him that he would get back with him on Monday, but he never did contact him. (Tr. 602-603.)

While Alexander and Charlie Johnson were having this conversation, a man came out of the yard and went around to all the vehicles, taking the leaflets off the cars, ripping them up and throwing them in the trash can next to gate. (Tr. 604-605) Alexander testified that the man was wearing blue coveralls, with an NCS tag and a nametag of "Rick." (Tr. 605.) Alexander asked the man if he owed all the cars, and he said he did. Hamm then asked the man if he'd been instructed to take the paperwork off the cars. (Tr. 605.)

Richard Jenkins, the newly appointed Local 713 shop steward, testified that when he returned to the plant from the card check he saw literature on the employees' vehicles. He changed into his work clothes, went back out the gate, and removed the literature from his vehicle and two of his friends. (Tr. 963-964.) Jenkins stated that one of the Teamsters asked him why he was removing the literature and he responded that it was his car and the others belonged to his friends. (Tr. 964; 555-556.) Charlie Johnson was standing there. Alexander testified that he said to Johnson, "Since you're the owner of this company and you have no problems with your employees going union if they want to go union, why don't you stop this man from tearing up that literature and taking that literature off the vehicle?" (Tr. 606.) According to Alexander, Charlie Johnson replied that he did not want to get involved with it, and stated, "You know these inner-city people? You can't tell them nothing." (Tr. 606; 558.) Charlie Johnson denied making this comment. (Tr. 118.) He testified that he told Alexander, "I've been telling these people who are inner-city people, that they needed to stay away from any trouble with the Teamsters." (Tr. 117.) Johnson also testified that he did not recall Jenkins coming out first to remove the literature. Rather, when he looked up from his conversation with Alexander "all the employees were coming off the yard to take stuff off their cars."[26] (Tr. 121.) Hamm testified that he pointed out to Charlie Johnson that the man ripping up the literature was on the clock and that he asked Johnson if he would instruct him to stop doing that. Charlie Johnson did not respond. (Tr. 606.) When Alexander told Johnson that the Teamsters were going to put the leaflets back onto the vehicles, Charlie Johnson got back into his car and drove to the other side of the property. (Tr. 607.)

Jenkins went into the yard and told the employees that the Teamsters were putting literature on their vehicles. (Tr. 964.) Employee Alonzo Coleman testified that Maritas, whom Coleman referred to as "Kojack," instructed the employees to remove the Teamsters literature from their cars. (Tr. 987-988.) According to former Employee Sean Phelps,[27] Maritas and

[26] Charlie Johnson later contradicted himself by testifying that he saw Jenkins removed the literature from his car and that Alexander asked him to tell Jenkins to stop removing the leaflets. (Tr. 849-850.)

[27] Sean Phelps testified that he was interested in hearing what the Teamsters had to offer. He testified that from the time he started working for NCS in mid-February 2002, he was told

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Jenkins instructed the employees to tear up the literature in front of the Teamsters. (Tr. 787.) Jenkins gave them a "pep talk" about how they were going to go out there and get the information off the windshields, tear it up, and come back into the yard.[28] (Tr. 797.)

As Alexander leafleted the parked cars, he saw a group of 10-12 men congregate in the yard. Ten minutes later, the group walked across the yard toward the gate where the Teamsters were leafleting, led by a shaved headed gentleman, in his late 30's early 40's, wearing a suit and sunglasses. The man in the suit stopped at the gate, but the workers proceeded to the cars and started tearing up the literature. (Tr. 608.) Alexander and Hamm tried to talk to the workers, but no one responded. Alexander then introduced himself to the man by the gate, but he refused to give his name. When Alexander asked him what union he belonged to, the man replied, "That doesn't make any difference either…All you need to know is it's a big union out of New York." (Tr. 608-609.) After removing the literature from the cars and tearing it up, the employees walked back through the gate, and got into a waiting shuttle van. After Jenkins and Maritas briefly talked to the employees in the van, it drove to the other end of the yard.

R. *NCS and Local 713 Sign A Contract*

On March 20, 2002, Maritas sent contract proposals to the NCS attorneys. (R. Exh. 16.) Attorney McGuire testified that the proposals were basically like the FOPE contract but with some alterations. (Tr. 714.) On March 22, McGuire, Maritas, Joe Rohen and Richard Jenkins met to discuss the contract proposals. Some modifications were made to wages[29] and Charlie Johnson's approval was obtained by phone. A tentative agreement was reached the same day. McGuire typed up the final agreement as Maritas waited. Maritas informed McGuire that he would submit the contract to the membership for ratification.

On April 3, a majority of the bargaining unit employees ratified the Local 713 contract. Alan Reardon opposed the contract. He told Maritas that he "didn't like the contract he was trying to ram down our throats. I had gotten a rough draft of the contract from Richard Jenkins and it had the things in there that we said we wanted but it also had a ton of stuff that I knew we didn't want and we had never gotten the opportunity to look at a whole contract." (Tr. 649.) Reardon testified that "[I]t really looked to me from what I saw in the contract that the man was working for New Concept Solutions and not a representative for the rank and file." (Tr. 649.) Reardon stated that he told Maritas exactly what he thought of him and the contract. He testified "I told him I felt like he was in New Concept Solutions' pocket, you know. Well, there's like four of five points that I wanted changed adamantly or at least strongly negotiated and they were just given away. I told him I had no use for him, he could go talk to another employee around the yard and try to convince them that it was a good contract, but I was going to tell everybody I saw to vote no on it if I ever got the opportunity, because apparently they were skipping all these processes and going right to a finalized contract." (Tr. 650.)

The following day, NCS Operations Manager Charlie Ross called Reardon into his office to ask him why he had a problem with the contract. Reardon reiterated some of the points he

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that, "there were people out there from Teamsters Union that would try to talk with you and give you a card in regards to representation and basically not to talk with them." (Tr. 786-787.) Phelps testified that he was told this by staff members, as well as Richard Jenkins.[27] (Tr. 787.)

[28] However, Jenkins and Coleman both testified that no one from management instructed employees to tear up the Teamsters' literature. (Tr. 964, 989.)

[29] A two-tiered wage scale was agreed upon which paid employees hired prior to March 22, 2002, 50 cents an hour more than those hired after March 22.

had covered with Maritas. (Tr. 650.) Ross told him "we all just have to try to get along." Reardon testified that "[t]hat afternoon they offered me a nonunion position in management. So I just drew my own conclusions from there why that was." (Tr. 651.)

S. *The Teamsters Reassert Its Demand to Bargain with NCS*

On July 18, 2002, McLain sent Charlie Johnson another demand letter requesting to meet and bargain regarding the terms and conditions of employment for the bargaining unit employees at the GM Baltimore assembly plant. (R. Exh. 2.) The letter stated that "[t]his demand is consistent with our earlier letter dated December 5th and constitutes a continuing demand." It further stated "[a]s acknowledged by the allegations of the complaint in NLRB Case No. 5-CA-30312, New Concept Solutions has a bargaining obligation to the employees represented by Teamsters Local 557 at the General Motors Assembly Plant … [t]he reinstatement of those bargaining unit employees who have been denied employment and plans for compliance by NCS with the collective bargaining agreement shall be among the subjects of our negotiations. "

On July 19, Charlie Johnson reiterated that he was not a signatory to the master agreement, that he had no obligation to bargain with the Teamsters, and that he told Alexander that if he wanted to discuss "employment-related matters" that he should contact his office. The letter stated that it was apparent that the Teamsters were insisting on behalf of the former Leaseway employees that NCS adopt, in full, the terms and conditions of the national master agreement, and that in light of the foregoing, Johnson saw "no point meeting with you because it is clear that any such meeting would be futile." (R. Exh. 3; Tr. 168.)

T. *Credibility Resolutions*

I had the opportunity to observe and listen to Charlie Johnson testify twice over the course of 5 days. Once as a Rule 611(c) witness for the General Counsel and once as a witness for the Respondent. I evaluate the credibility of his testimony based on the evidence viewed as a whole, the internal and external consistencies and contradictions of his testimony, and his witness demeanor. There are facets of Charlie Johnson's testimony viewed in the aggregate which lead me to conclude that in the context of this case he had a propensity to be less than completely candid.

For example, on November 29, Charlie Johnson met with several UAW officials to allay their concerns that the vehicles coming off the GM production line would be handled properly. At trial, Charlie Johnson denied that he told those present at this meeting that the NCS workforce would be represented by the machinists union.[30] Rather, Charlie Johnson testified that he told the GM officials and UAW representatives that the independent drivers doing the truckaway work for NCS out to 150 miles from the GM plant would be represented by the Machinists. (Tr. 73-74.) While I credit this part of his testimony, there is no evidence that what he told the group at that time was true. There is not a scintilla of evidence that by November 29 Charlie or David Johnson had made any arrangements with any truckers represented by the machinists union to do the truckaway work for NCS. Nor is there any evidence that he was planning on doing so. Rather, the evidence shows that the NCS proposal designed by David Johnson called for independent truckers, non-union members, to bid for the NCS with no precondition that they would be represented by a union. (Tr. 74, 891; G.C. Exh. 17.) Charlie

[30] A UAW newsletter published with information provided by GM indicated that the NCS employees would be represented by the machinists union.

Johnson testified that at one point his son, David Johnson, had talked about using drivers represented by the machininsts for truckaway work, but apparently that was simply "talk." David Johnson, the architect of the NCS proposal, made no mention of using machinists drivers in his testimony and, in fact, they were never used. Thus, the evidence shows that at the November 29 meeting, Charlie Johnson was less than straightforward on an issue of great concern to those in attendance. While that alone does not determine his credibility, it does provide some valuable insight on his ability to tell the truth.

On the issue of whether Charlie Johnson invited FOPE to solicit the NCS employees to join that union, Charlie Johnson was asked the following questions:

> Q. Mr. Johnson, after you were awarded this General Motors contract On or about November 20, 2001, you contacted Ron Borges, correct?
>
> A. Yes.
>
> Q. And you asked him to come in and sign up your employees for FOPE, Correct?
>
> A. No. He asked me if he could have an opportunity to talk to the employees and I gave him the opportunity.

(Tr. 98.)

There is no evidence, however, showing that Borges (or any other union representative) expressed an interest in representing the NCS employees prior to Johnson's phone call. Nor is there any evidence that the idea of union representation originated with or was initiated by the newly hired NCS employees. Rather, the evidence viewed as a whole shows that Charlie Johnson was the sole driving force behind getting a union to represent the NCS employees because that is what GM told him he was required to do. On cross-examination, Charlie Johnson effectively contradicted himself by testifying that when he phoned Borges on December 17, 2001, "I told Ron I was coming in and that if he wanted to he could come in and talk to the people on the 18th." (Tr. 174; 98.) The evidence shows that the very next day, December 18, Johnson told the newly hired NCS employees that he had an old friend, who was a really nice guy, and that he wanted them to give him their attention. Johnson walked out of the room and Borges walked in. A short time later, all the employees had signed union authorization cards. Contrary to Charlie Johnson's assertions, I find that the evidence viewed as a whole supports a reasonable inference that Charlie Johnson phoned Ron Borges on December 17 to ask him to solicit the newly hired NCS employees to join FOPE.

On March 15, Charlie Johnson encountered the Teamsters leafleting cars on a public street outside the GM plant, and asked Union President Alexander what he was doing. Alexander told him that he wanted an opportunity to talk to the NCS employees. (Tr. 849.) According to Alexander's unrebutted testimony, Johnson replied, "Look, guys, if you want to talk to my men just give me a call and we'll make an appointment…I have no problem with these guys being union if they want to be." (Tr. 602; 848) Alexander testified that he asked Charlie Johnson what had changed his mind, and Charlie Johnson repeated that all they had to do was set up an appointment.[31] The undisputed evidence shows, however, that that very same

[31] Alexander stated that he told Johnson, "I'm asking you right now…I'd like to make an appointment to talk to these people," and Charlie Johnson replied that he would speak with Huff

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morning, Johnson recognized Local 713 as the new bargaining representative of the NCS employees. Rather than be upfront with Alexander by telling him that the NCS employees were already represented by a union, Charlie Johnson led him to believe that there may be an "opportunity" to speak to the employees and that he would get back to Alexander about setting up an appointment. His statement was insincere and untrue. To the contrary, the evidence viewed as a whole supports a reasonable inference that Johnson had no intention of ever allowing the Teamsters to talk to the NCS employees. I find that this lack of candor by Charlie Johnson reflects an unwillingness to tell the truth, even where the consequences for doing so are slight.

In addition to facets of Charlie Johnson's testimony, there is a document which reflects an inclination for inaccurately representing the facts involving this case. By letter, dated July 11, 2002, Charlie Johnson wrote to the President of the United States soliciting his aid in having this case dismissed. In the letter, he stated:

> After being awarded the contract, I used a federal program for hiring and giving inner-City residents an opportunity to make living wages. Through Baltimore Works we hired 19 inner-City people; 19 hard-core, unemployed, disadvantaged people. The International Brotherhood of Trade Unions organized our people. Here's the problem:
>
> The Teamsters who held these jobs before claimed these jobs without making an effort to contact our company to let us know of their intent for their people. So now they are using the Labor Board to force the inner-City people off the job so that their union workers can retain the work….

(G.C. Exh. 22.)

There is no evidence showing that the 19 employees hired by NCS between December 2001 – July 2002 were "hard-core," "disadvantaged," or "unemployed." Rather, a careful review of the employment applications of present and past NCS employees discloses that many of them had taken college or professional school courses, some of them were employed at the time of application, and a few of them were making more money than the starting wage offered by NCS. (G.C. Exhs. 31 and 32.) In addition, the undisputed evidence shows that the Teamsters wrote and phoned Charlie Johnson in December 2001 to let him know of their intent for their members, as well as picketed and leafleted the GM plant.

The inaccurate portrayal of the circumstances by Charlie Johnson, as a business leader, in a letter to the President of the United States reflects a tendency to overstate the facts regardless of the intended audience. This, along with various aspects of Charlie Johnson's testimony, lead me to conclude that in the context of this case he had a propensity to be less than fully candid.

Regarding the specific issue of whether Charlie Johnson and Ron Borges agreed on a wage increase on December 18, Karen Ayers and Alan Reardon both testified that on December 18, the day that Borges first spoke to the NCS employees, Borges met with Charlie

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to see what time was best. Alexander testified that he handed Johnson his business card and Charlie Johnson told him that he would get back with him on Monday, but he never did contact him. (Tr. 602-603.)

Johnson for about 30 minutes during a lunch break. Borges then returned to the group telling them that he had gotten them $11.50 an hour and a $.50 raise in January, and that he would discuss other items later. (Tr. 245, 636.) Johnson denied that he agreed to any wage increase on December 18. (Tr. 101, 102.)

There are several factors that make Charlie Johnson's denial implausible. First, the unrebutted testimonies of both Ayers and Reardon shows that Borges reported to the employees that Johnson agreed to a wage increase. Second, only Ron Borges or another employee working on December 18 could legitimately rebut their corroborative testimonies. Neither did so. Notably Ron Borges did not appear and testify at the trial. He was subpoenaed by the General Counsel, but did not comply with the subpoena. He was not called as a witness by the Respondent. No explanation was given for his absence. That strikes me as being very odd because if there was one person who could corroborate Charlie Johnson's testimony on this point it would be Ron Borges. Although I recognize that the Respondent does not have control over Borges, one would think that he would be willing to help his "old friend" Charlie Johnson, if he could, by appearing and testifying about what they agreed upon and when. After all, this is the same Ron Borges who on December 17, hung up the phone with Johnson, hopped in a car, and drove all the way from Detroit to Baltimore in order to show his gratitude for the "opportunity" to talk to the NCS employees on December 18. One would think that he would voluntarily appear at trial to explain what transpired on December 18, 2001, if it would help an old friend. He did not.

The Respondent points out that parts of Ayers' testimony concerning the events of December 18 are inconsistent with her pretrial statement. I do not find her testimony concerning what Ron Borges told the group when he returned to them after talking to Charlie Johnson to be inconsistent. Besides, Ayers' testimony on this point is corroborated by Alan Reardon and it is unrebutted by anyone else who was present. For these, and demeanor reasons, I credit Ayers' and Reardon's testimonies on this point and I reject Charlie Johnson's denial.

A credibility resolution is required concerning comments that Charlie Johnson purportedly made to the NCS employees in early January 2002. Karen Ayers credibly testified that on the second day of work at the GM plant, Charlie Johnson held a meeting of all NCS employees in the lunchroom. According to Ayers unrebutted testimony, Johnson told the group to ignore the Teamsters and that he had hired an off-duty police officer to patrol the yard for the employees' protection. (Tr. 256-257, 287.) She further testified, however, that Charlie Johnson also told the employees that the Teamsters had put Leaseway out of business because of the high wages that the company had to pay and that Charlie Johnson told them that he could not afford to run the company like that, which was why they were receiving $11.50 (Tr. 257.) Johnson denied making this statement.

At trial, Respondent's counsel sought to impeach Karen Ayers' credibility by pointing out some inconsistencies between her testimony concerning the events of December 18 and 19 and her pre-trial statement. Ayers was generally unphased. She calmly stated that the affidavit was probably correct because it was closer in time to the actual incident. (Tr. 288-290.) At one point, she was asked an awkwardly worded question by Respondent's counsel, and stated, You, know, I getting confused. I mean, I testified what I heard, and I feel like things are kind of getting turned around a little." (Tr. 271.) To the extent that her testimony at trial may have been inconsistent with her pre-trial statement concerning the events that transpired on December 18 and 19, there were no such inconsistencies pointed out by Respondent's counsel with respect to her testimony about what Johnson stated in early January 2002. I suspect that if Ayers' pre-trial statement had been inconsistent with her trial testimony at trial on this point, the Respondent's counsel would have pointed it out. He did not. I found Ayers to be a forthright

witness. The evidence shows that she was a short term employee, who worked for NCS for approximately one month. There is no evidence disclosing that she left on less than satisfactory terms and there is no evidence reflecting that she had some reason to lie.

If anything, there is a ring of truth to Ayers' testimony in that the evidence shows that Johnson experienced his own problem with Teamsters wages when he owned Active Transportation Company. Indeed, the evidence shows that after the Teamsters rejected Charlie Johnson's request for wage relief, he sold his interest in the business. Thus, Johnson knew first hand the impact that Teamsters' wages could have on a business, which makes it more likely, than not, that he made the statement. For these, and demeanor reasons, I credit Ayers' testimony on this point.

There is another credibility resolution that is required with respect to comments purportedly made by Charlie Johnson to the NCS employees in late January – early February 2002. The unrebutted testimony shows that Charlie Johnson had another meeting with the NCS employees at this time to tell them that FOPE had withdrawn as their union representative. In this meeting, Johnson opined that it was better for the NCS employees to be unionized, even though he did not think they needed a union. Former Employee Alan Reardon testified that he proposed contacting the Steelworkers union about representing the NCS employees. According to Reardon, Charlie Johnson told him that "[h]e wanted to have some control over what union came in and he had some ideas and he would handle it." (Tr. 642.) Johnson denied that he told Reardon that he would like to have some control over which union came in. (Tr. 864.) He testified that he told Reardon that there was a problem using an AFL-CIO union and that he was "thinking about using somebody else." (Tr. 864.)

Former Employee Alan Reardon was a solid witness. His recollection was good and he was very straightforward. Observing him testify, I got the distinct impression that Reardon had no favorites in this trial. He credibly testified that he told the Teamsters' President Alexander to "go pound sand" in late December 2001, when in a face-to-face discussion, he told Alexander if any Teamsters followed him home he would call the police and press charges. (Tr. 618, 659.) He also testified that he told Maritas of Local 713 that he thought he (Maritas) was in the Respondent's hip pocket and that he did not like the Local 713 contract. According to Reardon's undisputed testimony, he repeated the same statement to Operations Manager Charlie Ross later the same day. (Tr. 649-650.) Reardon displayed good recall and answered questions directly. The evidence discloses no motive for him to fabricate testimony.

In addition, Charlie Johnson's conduct subsequent to this conversation with Reardon is consistent with Reardon's testimony. The evidence shows that Charlie Johnson instructed his attorney to find a non-AFL union that might be interested in representing the NCS employees. Attorney McGuire contacted Local 713, and asked Maritas if he would be interested in soliciting the NCS employees to join his union. There is no evidence that Local 713 initiated contact with NCS or that the notion of having Local 713 as a union originated with the employees. Charlie Johnson and Attorney McGuire met with Maritas to discuss the situation at NCS and Charlie Johnson gave Maritas unrestricted access to the NCS facilities and employees. After Maritas obtained the requisite authorization cards, Johnson recognized Local 713 and entered into contract, which was remarkably similar to the FOPE contract. The evidence viewed as a whole reflects that Charlie Johnson had control over the entire scenario, which is consistent with Reardon's testimony.

For these, and demeanor reasons, I credit Alan Reardon's testimony that Charlie Johnson told him that he wanted to have some control over which union represented the NCS employees.

There is a question of credibility concerning the discussion which took place at the November 30, 2001 meeting between the MOED staff and David Johnson and Operations Manager Charlie Ross. The undisputed evidence shows that MOED's Edith Brown-Johnson asked David Johnson if NCS was a union company and he responded, "No." (Tr. 389, 896.)[32] His response was untrue because he knew going into that meeting that NCS was required by GM to be a union company. The undisputed evidence shows that from the very first time David and Charlie Johnson met with a GM official to discuss NCS performing work at the GM Baltimore facility, and at every single meeting thereafter, they were told by GM that their employees had to be represented by a union. (Tr. 109-110,112; 890, 948.) David Johnson testified that he interpreted the question to ask "was NCS unionized at the time?" Because NCS had no employees at the time, he answered, "No." (Tr. 951.) His explanation is dubious. The more plausible explanation for his decision to deny that NCS was a union company is that he was unsure why the question was being asked. For that reason, he did not want to highlight the fact that NCS was a union company because he did not know where the conversation would go.[33] David Johnson's lack of candor taints his credibility.

Significantly, Deborah Holland, a MOED workforce development specialist, testified that in the same meeting David Johnson stated that NCS was taking over a company. She credibly testified that when she asked him if NCS was "going to hire any people from the old company," David Johnson stated, "No." (Tr. 678, 685.)[34] David Johnson denied that he told Holland or anyone else at the meeting that NCS would not hire any former Leaseway employees. He testified that "Leaseway was never mentioned in the meeting." (Tr. 896.) Respondent's counsel argues that David Johnson's denial should be credited because Edith Brown-Johnson did not corroborate Holland's testimony. A review of Brown-Johnson's testimony, however, reveals that she was not specifically questioned about this part of the discussion. In the same manner, the Respondent did not call Operations Manager Charlie Ross to corroborate David Johnson's testimony or explain why he was not called as a witness. Thus, this credibility resolution turns on who is the more credible witness, David Johnson or Deborah Holland. I find that it is Deborah Holland.

Holland was an unwavering witness. More than once, Respondent's counsel sought to challenge Holland's assertion, but Holland stood firm:

> Q. Okay. Now you claim that David Johnson told you that the company was not interested in hiring employees from who?
>
> A. I'm not claiming. That's what I asked, were any of the people

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[32] Edith Brown-Johnson further testified that neither she, nor Debra Holland or Romella Stevens were told that they would be recruiting applicants for jobs currently held by Teamsters represented employees. (Tr. 389.)

[33] The credible evidence also shows that David Johnson did not tell the MOED officials that the work NCS was taking over at the GM plant was currently being performed by employees represented by the Teamsters. (Tr. 389-390.)

[34] Holland further testified that she later asked the same question when they were interviewing applicants at the Eastside Career Center and was told that NCS was not going to hire Leaseway employees. (Tr. 683.) David Johnson did not deny that Holland asked the same question at the Eastside Career Center and he did not deny telling her at that time that NCS was not going to hire any Leaseway employees.

from Leaseway going to be hired? He said, "No."

(Tr. 679.)

Q. Okay. But you nonetheless claim that that was something that was said and you observed?

A. I don't claim it, that's what was said.

(Tr. 670.)

Holland testified with conviction. She was very professional and very credible. Her recall was excellent. There is absolutely no reason that I know of, or that has been brought to my attention, why she would fabricate testimony.

Other the hand, David Johnson was less than candid with the MOED staff. He has a large personal stake in the outcome of this case, and there is a tremendous incentive for him to deny Holland's testimony on this point. He also did not deny telling Holland at the Eastside Training Center that NCS would not hire any Leaseway employees.

For these, and demeanor reasons, I credit Deborah Holland's testimony that David Johnson told her that NCS would not hire any Leaseway employees.

Finally, there is a discrepancy in the testimonies concerning whether managers were present in the room when the NCS employees signed union authorization cards for Local 713. Former Employee Sean Phelps testified that Sharon Huff, David Johnson, and Charlie Ross were present when the employees signed the cards.[35] (Tr. 792.) Former Employee Alan Reardon testified that while the employees were signing cards there were managers in the office located next to the lunchroom, specifically, Howard and Sharon Huff, Marge Ripkin and Walt Schuebel. (Tr. 647.)[36] Phelps Employee Alonzo Coleman testified that there were no management officials in the lunchroom when the employees signed the cards. (Tr. 987.)

The evidence shows that Sean Phelps left the employment of NCS under less than satisfactory terms and it was my impression from observing and listening to him testify that he was displeased with NCS, which gave him a motive to misrepresent what occurred. This, plus the fact that his testimony on this point is contradicted by two credible witness, one of whom (Alan Reardon) I find to be very credible, I do not credit Phelps' assertion that managers were present in the room while the NCS employees signed cards.

[35] Phelps also testified that the cards were backdated to March 12. (Tr. 792.) However, Employees Alonzo Coleman and Richard Jenkins testified that they signed cards on March 12, and that no one asked them to back date the cards. (Tr. 981-982; 986.) I credit their corroborating testimonies.

[36] The evidence shows that the managers were in an adjacent office that had a small window (1'6" by 6") that looks into the lunchroom. (Tr. 648.) There is no evidence that any of the managers were watching the employees while they signed the cards.

III. Analysis and Findings

A. *Teamsters*

1. Section 8(a)(3) violations

The amended complaint alleges that NCS failed and refused to hire the Leaseways employees because they were represented by the Teamsters. It asserts that if NCS had hired the Leaseway employees, it would have been obligated as a *Burns* successor[37] to recognize and bargain with the Teamsters.

The Act does not require a new employer to hire the employees of its predecessor. It does, however, prohibit a new employer from refusing to hire or retain the employees of its predecessor solely because they are union members or in order to avoid having to recognize the union. *Howard Johnson Co. v. Hotel & Restaurant Employees*, 417 U.S. 249, 262 fn. 8 (1974). This is settled law. *Daufuskie Island Club & Resort,* 328 NLRB 415, 421 (1999); *Galloway School Lines,* 321 NLRB 1422, 1423 (1996); *Love's Barbeque Restaurant,* 245 NLRB 78, 82 (1979), enfd. in relevant part sub nom. *Kallman v. NLRB,* 640 F.2d 1094 (9th Cir. 1981).

In *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board established an analytical framework for deciding discrimination cases turning on employer motivation. The General Counsel must persuasively establish that the evidence supports an inference that union activity or union membership was a motivating factor in the employer's decision not to hire an individual.[38] Specifically, the General Counsel must establish that union activity or union membership, knowledge, animus or hostility, and adverse action which tends to encourage or discourage union activity or union membership. *Farmer Bros. Co.,* 303 NLRB 638, 649 (1991). Inferences of animus and unlawful motive may be inferred from the total circumstances proved and in some circumstances may be inferred in the absence of direct evidence. *Fluor Daniel, Inc.,* 304 NLRB 970 (1991). Once accomplished, the burden shifts to the employer to persuasively establish by a preponderance of the evidence that it would have made the same decision even in the absence of union activity. *T&J Trucking Co.,* 316 NLRB 771 (1995).

In successorship cases, the Board also considers the following factors in analyzing the lawfulness of the alleged successor's motive: expressions of union animus; absence of a convincing rationale for the failure to hire the predecessor's employees; inconsistent hiring practice or overt acts or conduct demonstrating a discriminatory motive; and evidence supporting a reasonable inference that the new owner conducted its hiring in a manner precluding the predecessor's employees from being hired in a majority of the new owner's overall work force. *Galloway Schools Lines,* supra, 321 NLRB at 1423-1424.

In applying this legal standard to the evidence of this case, there is one factor that distinquishes this case from all other successorship cases, that is, the Respondent here was required by GM to have and to maintain a unionized workforce. David Johnson specifically refers to "using an AFL-CIO recognized workforce" in the very first paragraph of the very first page of the NCS proposal to GM. (G.C. Exh. 17.) Charlie Johnson testified that at every meeting with GM about taking over the work performed by Leaseway, he and David Johnson were told by GM that the NCS employees had to be represented by a union. (Tr. 109-110,112;

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[37] *NLRB v. Burns Security Services,* 406 U.S. 272 (1972).

[38] *Manno Electric, Inc.,* 321 NLRB No. 43, fn. 12 (1996).

890, 948.) Thus, from the moment that NCS bid to take over the Leaseway work, it knew that it had to have a unionized workforce.

a. *The General Counsel's evidence*

1. Knowledge of union membership

The undisputed evidence shows Charlie and David Johnson were well aware that Teamsters' Local 557 had represented the Leaseway bargaining unit employees at the GM Baltimore assembly plant for many, many years. Before bidding on the yard work in Baltimore, they had visited three Leaseway sites with a GM official and were told that the Teamsters represented the yard, drive-away, and truck-away employees. They were also told that NCS' employees had to be represented by a union.

After NCS was awarded the yard work, GM asked Charlie Johnson to advise the Teamsters in writing that NCS was taking over, which he did by letter, dated November 30, 2002. Before NCS started interviewing job applicants, Teamsters Business Representative McLain sent a December 5 letter to Charlie Johnson demanding to bargain on behalf of the Leaseway employees. At the same time, the Leaseway employees and their families picketed the GM facility on December 4 to force GM to cease doing business with NCS and/or to force NCS to recognize Teamsters Local 557. The Leaseway employees continued to leaflet at certain entrances to the plant through March 2003. It is undisputable that all times material in this case, Charlie and David Johnson knew that the Leaseway employees were Teamsters members, who were interested in preserving their jobs at the GM Baltimore assembly plant.

2. Animus

Ample evidence exists of animus toward the Teamsters. The evidence shows that Charlie Johnson over the years had an antagonistic relationship with the Teamsters involving two companies in which he was part owner: Active Transportation Company and Safety Carrier Inc.[39] While there in no indication that Charlie Johnson was not directly or indirectly involved in violating the Act in those cases, a reasonable inference can be made that his prior dealings with the Teamsters have been less than amicable, thereby leaving him unfavorably disposed to working with the Union in the future.

With respect to one of these trucking companies, the evidence shows that more recently, in July 2001, Charlie Johnson asked the Teamsters' International for wage relief under the national master agreement because as he explained small trucking companies like his own were unable to compete with the non-union carriers paying lower wages. The Teamsters rejected his request. Shortly thereafter, Charlie Johnson sold his ownership interest in Active Transportation and resigned from the employer bargaining team for national master agreement. Thus, the evidence supports a reasonable inference that Charlie Johnson opposed paying the Teamsters wage rate and resented the Teamsters' inflexibility, which caused him to withdraw from the trucking business, rather than be bound by a collective-bargaining agreement which purportedly restricted his ability to compete for work.

Other evidence shows that Charlie and David Johnson conveyed to the NCS employees a dislike for the Teamsters. Former NCS employee Karen Ayers credibly testified that when she started working for NCS she was told by her supervisors (Howard Huff, Sharon Huff, David

[39] 296 NLRB 431 (1989) and 306 NLRB 960 (1992), respectively.

Johnson, and Charles Ross) to ignore the Teamsters outside the gate. (Tr. 256, 258.) She further testified that during the first few days on the job, Charlie Johnson similarly told a group of employees that they should ignore the Teamsters and that he had hired an off-duty policeman to patrol the yard for the employees' protection. (Tr. 257.) At this meeting, he also told the employees that the Teamsters put Leaseway out of business with high wages and that he could not afford to operate if he had to pay the high Teamsters' wages. (Tr. 257.) According to the credible testimony of former NCS employee Alan Reardon, David Johnson told a small group of employees in January or February 2002, that the Teamsters wanted to get them to sign cards to represent them, but that NCS would go out of business if it had to pay the same type of wages that the Teamsters were receiving. (Tr. 638-639.) These statements made to the NCS employees by management officials imply that the Teamsters presented a danger to the NCS employees and that there would be undesirable consequences if they were represented by Teamsters.

Charlie Johnson's conduct in dealing with the Teamsters as compared to the way he treated FOPE and Local 713 also reflects animus toward the Teamsters. The evidence shows that more than once, the Teamsters made it very clear that it wanted the opportunity to meet and bargain with Johnson, or at the very least to talk to the NCS employees. The evidence further shows that on each occasion its overtures were unanswered, rebuffed or put off. On December 4, 2001, Teamster Representative McLain left a telephone message at Charlie Johnson's office asking for him to call. Johnson never returned the call. On December 5, McLain wrote to Charles Johnson demanding a meeting "on either December 10, December 13, 14 or December 17, 18, or 19." The next day, NCS' attorney wrote back stating, among other things, that "Mr. Johnson has no obligation to comply with your demand that he meet with you to engage in bargaining." (R. Exh. 1.) In early January 2002, Local 557 President Alexander and Teamsters Attorney Wallington entered the GM yard in hopes of talking to the newly hired NCS employees. They were intercepted by Charlie Johnson, who asked them to leave and told them that they needed to make an appointment in order to talk to the NCS employees. (Tr. 846.) In mid-March, Alexander again encountered Charlie Johnson as he and some former Leaseway employees leafleted cars outside the GM Baltimore assembly plant. Johnson again told Alexander that if he wanted to talk to the employees he had to make an appointment.

In stark contrast, in mid-December 2001, Charles Johnson phoned Ron Borges, FOPE's business representative, inviting him to come to Baltimore to talk to the NCS employees. When Borges responded affirmatively, Johnson phoned Attorney McGuire telling him that he was going to allow Borges to meet with the NCS employees. He also called his other attorney, Martin Klaper, Esq., instructing him to send McGuire a draft collective-bargaining agreement. FOPE's name was inserted in the draft contract in the event Borges hit it off with the NCS employees. (Tr. 98, 702-703.) The very next day, Johnson introduced Borges to the NCS employees, as an old friend and good guy, and asked the employees to give Borges their full attention. Borges was allowed to "pitch" his union to the employees, who were being paid by NCS to listen to him. The Teamsters did not receive the same treatment.

Charlie Johnson accommodated Local 713 in a similar manner. In late January 2002, Johnson learned that the Teamsters had successfully used the Article 21 proceedings to oust FOPE as the exclusive representative of the NCS employees. That prompted him to ask Attorney McGuire to find a non-AFL-CIO union for the NCS employees. McGuire phoned Local 713 Business Representative Maritas asking if his union might be interested in being "introduced" to the NCS employees. He also invited Maritas to meet Charlie Johnson. Shortly thereafter, Johnson, McGuire and Maritas met in McGuire's office. (Tr. 711.) Johnson testified that "I wanted to give him an opportunity to talk with the people to see if the people would want to be a part of this union." (Tr. 114.) Maritas was not required to "make an appointment."

On the other hand, the Teamsters, who stood outside the gate for almost three months leafleting in an effort to communicate with the NCS employees, were not given the same opportunity to talk with the NCS employees. To the contrary, on March 15, the day NCS signed a recognition agreement with Local 713, Charlie Johnson stood-by the gate and watched, as Maritas led the NCS employees, who were on Company time, off-the-property en masse and onto a public street. There, in the presence of the Teamsters officers and members, they tore-up the Teamsters leaflets that had been placed on their motor vehicles. When they finished, they were shuttled away in a Company provided vehicle. While there is no evidence that NCS management instructed its employees to destroy the Teamsters leaflets, Charlie Johnson's inaction shows that he approved and condoned his employees' contemptuous opposition to the Teamsters. I find that the words, actions, and inaction of Charlie Johnson (and to a lesser extent, David Johnson) amply shows animus toward the Teamsters.

c. Overt Acts

Charlie and David Johnson knew that having a union was a precondition to getting the GM contract and keeping it. They also knew when they were awarded the GM contract in mid-November 2001, that they had less than 45 days to startup their operation with a unionized workforce. The evidence shows that rather than hire any of the Leaseway employees, who had been doing the same work in the same location and who were unionized, they initiated a frenzied hiring effort to recruit, screen, hire, train and "unionize" a new workforce in roughly 30 days.

They hired a consultant, Lisa Lunsford, to jumpstart their hiring process, called the Urban League even before they had a signed contract with GM, and by default opted to use MOED because they needed to hire a workforce as soon as possible. There was an exchange of telephone calls, paper work was faxed, and a meeting with MOED was quickly scheduled for November 30. At that meeting, David Johnson told the MOED officials that he needed to hire 12 employees by December 15, and at his request a one-day "mass interview" was held on December 7. Everyone was hired and training started on December 17, and by December 18, Ron Borges was verbally demanding recognition, which was granted after a card check that was held the very same day. Two days later, Borges had a final collective-bargaining agreement. In my view, that seems like an awful lot of effort to go through, while all along there was a unionized workforce, who had performed the same jobs at the same location, standing outside the gates of the GM plant waving signs, shaking fists, and yelling to keep their jobs.

Hiring the Leaseway employees in order to quickly employ a unionized workforce seems so obvious, that even newly hired NCS supervisor, Howard Huff, wasted no time in soliciting Leaseway recruits. The evidence shows that on December 13, 2001, GM suggested to Charlie Johnson that he hire Leaseway Supervisor Howard Huff to manage the yard. (Tr.839-842.) That same day, Johnson obtained permission from Leaseway to talk with Huff, and offered him a job as NCS yard manager. Huff wanted some time to think over the offer. The next day, December 14, he asked some of the Leaseway employees if they would be interested in working for NCS if there was a job opening for less pay. (Tr. 511, 525.) Other employees, like Teamsters' Shop Steward John Moe, approached Huff telling him that he and a few others would be interested in working for NCS, even if it meant a pay cut. (Tr. 480-481.) Later that day, December 14, Huff told Johnson he would take the supervisor's job at which time he asked Johnson how NCS was going to staff the yard positions. Johnson told him through MOED. (Tr. 842.) A few days later,

Huff told Moe that Johnson wanted to hire his own people.[40] The evidence shows that Huff instinctively recognized the benefit of hiring some Leaseway employees to startup the NCS operation. Instead, with less than 45 days before taking over the GM releasing operations, NCS chose to recruit, screen, hire and train 12 nonunion employees, and have them unionized before January 2, 2002. NCS' decision to ignore the obvious choice of hiring the Leaseway employees supports a reasonable inference that its decision was motivated by animus toward the Teamsters.

The evidence further shows that in addition to ignoring the obvious choice of hiring the Leaseway employees, NCS ignored the Leaseway employees completely. There is no evidence that Charlie or David Johnson or any other Leaseway manager told the Leaseway employees how or where they could apply for a job at NCS. There was no notice given to them that hiring was being conducted through MOED. There is no evidence that the Union was told that if the Leaseway employees wanted to apply for a job with NCS, they should contact MOED. Knowing that it was required to employ a unionized workforce, it is reasonable to expect that NCS would at least tell the Teamsters, who had been doing the job where to apply for a job. Not because NCS was "legally" obligated to do so, but because it is comports with common sense.

In addition, the undisputed evidence shows that David Johnson acted overtly at the November 30 MOED meeting to avoid the possibility that any Teamsters' members would find out that MOED was recruiting for NCS. When MOED's Edith Brown-Johnson asked David Johnson if NCS was a union company,[41] he responded, "No." (Tr. 389, 896.) His response was untrue because he knew going into that meeting that NCS was required by GM to be a union company. The undisputed evidence shows that from the very first time David and Charlie Johnson met with a GM official to discuss NCS performing work at the GM Baltimore facility, and at every single meeting thereafter, they were told by GM that their employees had to be represented by a union. (Tr. 109-110,112; 890, 948.) David Johnson unpersuasively testified that he interpreted the question to ask "was NCS unionized at the time?" (Tr. 951.) His explanation is dubious. [42] By concealing the truth, David Johnson avoided the possibility of MOED following a different procedure which could have delayed the recruiting effort until notification was provided to the Leaseway employees as part of the MOED rapid response program, and resulting in the Leaseway employees applying for jobs.

In the same MOED meeting, David Johnson acted overtly by making it futile for the Leaseway employees to apply for the NCS jobs, even if they submitted an application to MOED. The credible evidence shows that Deborah Holland asked David Johnson if NCS was going to hire any people from Leaseway, and he told her, "No." (Tr. 678-679.) Deborah Holland unequivocally testified that even if a Leaseway employee had come through MOED to apply,

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[40] The undisputed evidence shows that even though Huff told Moe that Johnson wanted to hire his own people, Moe nevertheless gave Huff a list of employees on December 28, who were interested in working for NCS for less money. The evidence further shows that NCS subsequently hired more employees. Eventually, one former Leaseway employee, Sharon Evans, was hired in June 2002. (G.C. Exh. 31-L.)

[41] The evidence shows that this question is typically asked of employers seeking to contract with MOED because as Susan Tagliaferro explained, if it is a union company, MOED would contact the union first to obtain the union's consent. If the union does not respond in 30 days, MOED proceeds with training. (Tr. 300; 389.)

[42] The credible evidence also shows that David Johnson did not tell the MOED officials that the work NCS was taking over at the GM plant was currently being performed by employees represented by the Teamsters. (Tr. 389-390.)

she would not have referred him because it would have been a waste of the person's time. (Tr. 684.) See *C.J.B. Industries,* 250 NLRB 1433 (1980). This is particularly true because David Johnson was solely responsible for hiring the individuals referred by MOED and every applicant had to be interviewed by him or Charlie Ross, who helped with the interviews. The unrebutted testimony of Holland shows that she asked the same question again at the December 7 interviews at the Eastside Career Center, and David Johnson again told her that NCS was not going to hire any Leaseway employees. (Tr. 683.)

The evidence viewed as a whole, therefore, shows that Charlie and David Johnson directly and indirectly thwarted the hiring of Leaseway employees by failing to tell the Leaseway employees how and where to apply for the NCS jobs, by failing to tell the MOED officials that NCS was a union company, and by telling the MOED officials that NCS would not hire any Leaseway employees. Although NCS did not instruct MOED to exclude any group from being referred for employment, the credible evidence shows that Charlie and David Johnson made it virtually impossible for any Leaseway employee to be hired, even if they had been referred by MOED.

For all of these reasons, I find that the General Counsel has satisfied his initial evidentiary burden. Thus, the Respondent must persuasively show that it would have acted the same even in the absence of union membership or that the reasons proffered for its decisions are not pretextual.

b. *The Respondent's defenses*

The Respondent correctly argues that it has no legal obligation to hire any of its predecessor's employees or to initiate the employment relationship. The issue, however, is not whether NCS had a legal obligation to hire the Leaseway employees or a legal obligation to initiate the employment relationship. The issue here is whether NCS' refusal to hire any Leaseway employees was unlawfully motivated because they were Teamsters members.

The Respondent also argues that no unlawful motive can be attached to the use of MOED to recruit job applicants. It asserts, and the evidence shows, that using MOED to recruit employees is consistent with Charlie Johnson's prior recruiting practice of using the Urban League. In this connection, Respondent asserts that *Textron, Inc.,* 302 NLRB 660 (1991), is factually analogous to the circumstances here. I disagree.

In *Textron,* the employer had used the Ohio Bureau of Employment Services (OBES) for several years for the referral of job applicants. It also had a long-standing informal policy of not hiring former employees because it had found that employees who were rehired generally performed poorly. A strike occurred and the employer was faced with the prospect of hiring a large number of replacement strikers in a short period of time. Unable to adequately determine the reason for termination of former employee applicants, it adopted a strict policy against hiring all former employees, which meant that 23 former employees who applied for jobs during the strike were not hired. When the strike ended, the strikers' recall rights were limited by agreement to a 1-year period. After the 1-year period expired, 150 unreinstated former strikers were terminated.

A few months after the 150 unreinstated former strikers were terminated, the employer began hiring new job applicants using referrals from OBES. Because the employer made no attempt to contact any of the 150 unrecalled former strikers and because it actually rejected three unreinstated strikers who were referred by OBES, a complaint was filed. The Board, reversing the administrative law judge, found (1) no evidence of animus by the Respondent

toward the Union or the former strikers; (2) no basis for inferring unlawful motivation in the employer's use of OBES; and (3) that the employer maintained a strict policy of not hiring former employees. It therefore dismissed the complaint.

I find *Textron* to be inapposite. First, *Textron* is not a successorship case. It is a strike case. Next, there is no evidence that NCS has a policy, strict or otherwise, against hiring anyone. Rather, the credible evidence shows that the very first time NCS sought to hire a workforce, David Johnson told the MOED officials that NCS would not hire the Leaseway employees, who are represented by the Teamsters. Nor is there any evidence that NCS or Charlie Johnson has a strict policy of hiring only certain job applicants. Charlie Johnson's assertions that he wanted to hire disadvantaged, inner-city people or that he has hired such people in the past falls short of showing that he has only hired disadvantaged, inner-city people in the past to the exclusion of all others. More importantly, there is no evidence that NCS hired only disadvantaged, inner-city people. Finally, there is ample evidence of animus toward the Teamsters in this case. Thus, I find that the Respondent's reliance on *Textron* is misplaced.

Although the use of MOED to recruit job applicants may not be discriminatory on its face, the manner in which MOED's services were utilized reflects a discriminatory motive. First, by not telling the MOED staff that the Leaseway employees were represented by a union, David Johnson prevented MOED from coordinating its recruitment and rapid response efforts to the detriment of the Leaseway employees. Next, by telling the MOED staff that NCS was not a union company, the Respondent avoided the possibility of MOED following an alternative procedure may have resulted in contacting the Leaseway employees. Finally, by telling the MOED staff that NCS would not hire any Leaseway employees, David Johnson effectively precluded the referral of any of those employees, even if they had applied for a job through MOED.

Finally, and contrary to the Respondent's assertions, the evidence shows that the reasons given by David and Charlie Johnson for using MOED are pretextual. Although David Johnson testified that NCS went to MOED because it wanted to employ disadvantaged youth (Tr. 896), there is no evidence that he told the MOED officials that NCS wanted to hire disadvantaged youth. Rather, the evidence shows that he told MOED that NCS was a new company, that they had received work at the GM Broening Highway plant, they were looking for approximately 15 employees, that they wanted to interview between December 4-15, and that they wanted to begin training on December 17. (Tr. 896.) Notably, the NCS customized training application indicates that all applicants must be at least 18 years old with a valid driver's license, which automatically would exclude many, if not all, job seekers in the youth category. (G.C. Exh. 46-50.)

Charlie Johnson testified that he came to Baltimore because he wanted to "offer jobs to inner-city disadvantaged residents." (Tr. 76, 161.) There is no evidence, however, that he communicated this preference to MOED so that it could tailor its job announcement to recruit job candidates that fit this profile. (Tr. 380.) Nor is there any information in the initial facsimiles exchanged between MOED's Susan Tagliaferro and NCS Hiring Consultant Lisa Lunsford that directed MOED to target this particular group. Although MOED considers hard to place individuals in making referrals, the evidence shows that MOED draws from "a database of thousands of workers looking for jobs, seeking to change careers or upgrade their skills." (G.C. Exh. 46, page 2.) Thus, there was no basis for Johnson to expect that MOED would refer only disadvantaged, inner city, hard core job applicants because he never made this preference known to the MOED staff.

Nor is there any evidence that any of the 12 NCS employees hired in December 2001

were disadvantaged, inner city, indigent applicants. It is important to note that David Johnson had sole control over who actually was hired by NCS. He interviewed all the applicants with some assistance from Charles Ross. In other words, David Johnson hand-selected the NCS workforce. Contrary to the Charlie Johnson's assertions, the evidence shows that the workforce that his son, David, hired was comprised of two Caucasians (Ayers and Reardon), six applicants who were employed at the time they applied (Sow, Green, Ayers, Holland, Dickerson, and Bell), six applicants who had taken post high school or college courses (Jenkins, Sow, McKenzie, Burrell, Ayers and Holland), and three applicants who were making more than the NCS starting wage (Ayers, Holland, and Bell). (G.C. Exh. 31 and 32.)

Based on the evidence viewed as a whole, I find that the reasons given by Charlie and David Johnson for using MOED to refer job applicants were pretextual. They neither requested nor sought to ensure that the NCS workforce was comprised of disadvantaged, inner city, indigent applicants or made any attempt to hire individuals who matched this profile. The Respondent therefore has failed to satisfy its *Wright Line* evidentiary burden. Accordingly, I find that the Respondent violated Section 8(a)(3) of the Act by failing to hire the Leaseway employees, who expressed an interest in working for NCS as of December 28, 2001. (G.C. Exh. 74.)

2. Section 8(a)(5) violations

The complaint as amended further alleges that the Respondent would be the legal successor to Leaseway, but for the unlawful refusal to hire the Leaseway employees. The threshold test for determining successorship is: (1) whether the new employer conducts essentially the same business as the predecessor employer; and (2) whether a majority of the new employer's work force in an appropriate unit are former employees of the predecessor employer. *Fall River Dyeing v. NLRB,* 482 U.S. 27 (1987); *NLRB v. Burns Security Services,* 406 U.S. 272 (1972); *Sierra Realty Corp.,* 317 NLRB 832, 835 (1995), enf. denied 82 F.3d 494 (D.C. Cir. 1996).

With respect to the first prong, the parties stipulated and the evidence viewed as a whole shows that the Leaseway yard men performed the same work at the same location for the same customers as the NCS employees and that Howard Huff performed the same supervisory function for both employers. (Tr. 507; 814-819.) The only difference is that Leaseway performed truckaway delivery work using its own drivers and equipment, while NCS had responsibility for coordinating that service through September 2002, by obtaining bids from independent drivers and passing them along to GM. The Respondent does not argue, nor does the evidence shows, that the latter constitutes a substantial change in the operations that altered the essential nature of the yard work. Thus, I find that NCS is the successor to Leaseway.

With respect to the second prong, where, as here, the employer unlawfully refused to hire its predecessor's employees, the Board infers that those employees would have been retained, absent the unlawful discrimination. *Love's Barbeque Restaurant No. 62,* 245 NLRB 78, 82 (1979), enfd. in relevant part sub nom. *Kallman v. NLRB,* 640 F.2d 1094 (9th Cir. 1981). The Board also presumes that that the union's majority status would have continued. *State Distributing Co.,* 282 NLRB 1048 (1987). The evidence reflects that NCS began operation with 12 employees and at the time of trial employed 15 employees. (G.C. Exh. 34.) On December 28, 2001, Union Steward John Moe gave NCS Supervisor Howard Huff a list of 16 Leaseway employees who were interested in working for NCS. I find that these employees, all of whom were Teamsters' members, would have continued working for NCS, but for the Respondent's unlawful discrimination. Thus, I find that the second prong of successorship has been satisfied.

With respect to the appropriate unit for bargaining, the evidence shows that the duties and functions of the NCS employees and the Leaseway employees were the same, except that NCS outsourced the "truck-away" work. The transfer of vehicles from GM facility to yard to "truck-away" point of departure was essentially unchanged.[43] In essence, the evidence shows that the core element unit duties, and the location and nature of the work are unchanged. While the Respondent denied the allegations in the amended complaint defining the appropriate unit, it does not argue in its posthearing brief that the unit is not appropriate nor has it proffered any evidence showing otherwise. Accordingly, I find that the following unit is appropriate within the meaning of Section 9(b) of the Act:

> INCLUDED: All full-time and regular part-time employees who are utilized by the Company in the movement of motor vehicles from motor vehicle manufacturing facilities and/or storage areas and/or loading and unloading of those motor vehicles.
>
> EXCLUDED: All other employees, office clerical employees, guards And supervisors as defined in the Act.

For all of these reasons, I find that the Respondent meets all the criteria of a successor employer. Because the Respondent unlawfully refused to hire the Leaseway employees, it is obligated to recognize and bargain with the Teamsters as the representative of its employees. *Daufuskie Island Club & Resort,* 328 NLRB 415, 422 (1999). By refusing to bargain with the Teamsters, the Respondent violated Section 8(a)(5) of the Act. By unilaterally reducing pay, benefits, and terms and conditions of employment as provided in the collective-bargaining agreement between Leaseway and the Teamsters, the Respondent further violated Section 8(a)(5) of the Act.[44]

B. *FOPE*

1. Unlawful assistance and recognition of FOPE

The amended complaint further alleges that the Respondent unlawfully assisted, supported, and granted recognition to FOPE, and entered into a collective-bargaining agreement with that union, in violation of Section 8(a)(2) of the Act. As stated above, because the Respondent unlawfully refused to hire the Leaseway employees, there is a presumption that the Teamsters' status as the majority representative of the employees continued. *Daufuskie Island Club & Resort,* 328 NLRB 415, 422 (1999). There is no evidence that the Teamsters ever abandoned its claim to represent the NCS employees. To the contrary, the evidence shows that the Teamsters demanded to bargain with NCS and continued to pursue its rights as the exclusive representative of the bargaining unit employees.

The evidence shows, however, that Charlie Johnson, in consultation with his attorneys,

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[43] The evidence also shows that the computer tracking system used by NCS was different than the computer tracking system that had been used by Leaseway.

[44] While a successor employer ordinarily is free to set initial terms on which it will hire the predecessor's employees, *Burns,* supra, 406 U.S. at 294-295; *Holly Farms Corp. v. NLRB,* 48 F.3d 1360, 1368 (4th Cir. 1995) that right is forfeited, where, as here, the successor unlawfully fails to hire predecessor's employees. *Advanced Stretchforming International, Inc.,* 323 NLRB 529 (1997).

refused to recognize and bargain with the Teamsters, and instead phoned Ron Borges in Detroit, inviting him to talk to the NCS trainees in Baltimore, and allowing him to address the group on paid Company time the very next day. Based on the authorization cards that Borges collected the very first time he spoke to the employees, NCS recognized FOPE. The following day, NCS and FOPE met and discussed a contract proposal, which had been prepared by the Respondent's attorneys a few days earlier. After an hour or so, a collective-bargaining agreement was reached which contained minor modifications to the NCS proposed contract. Based on this evidence, I find that NCS violated Section 8(a)(2) of the Act by assisting and recognizing FOPE at a time when the incumbent union, the Teamsters, had not abandoned its claim to represent the NCS employees. See *Signal Transformer Co., Inc.,* 265 NLRB 272, 273 (1982).

Further, the evidence shows that in a rush to have a unionized workforce in place by the time NCS took over the GM yard operations, NCS prematurely and unlawfully granted recognition to FOPE at a time when it was not engaged in normal operations. *A.M.A. Leasing,* 283 NLRB 1017, 1023 (1986). The Board's test for determining an employer has prematurely recognized a union is twofold:

> At the time of recognition (1) an employer must employ a substantial and representative complement of its projected work force, that is, the jobs or job classifications designated for the operation must be substantially filled *and* (2) the employer must be engaged in normal business operations.

Hilton Inn Albany, 270 NLRB 1364, 1365 (1984), citing *Herman Bros.,* 264 NLRB 439 (1982) (emphasis added).

The undisputed evidence shows that on December 18, the day NCS recognized FOPE, the NCS trainees were in their second day of training which was held at a local church. At that point, their training consisted of watching videos of people moving and parking cars. The trainees did not begin to simulate staging, loading and unloading vehicles in the church parking lot until the following week, and did not actually come onto the GM yard/NCS worksite to being preparing the yard for operations until December 29. The Respondent did not take over the GM yard operations until January 1, 2002. The employees did not learn how to use hand-held scanners or any computerized tracking or logistic technology until after they began working at the GM yard. Thus, the evidence shows that NCS was not engaged in normal business operations until after January 1, 2002, which alone establishes a violation.

The Respondent does not dispute that it was not engaged in normal business operations at the time it recognized FOPE and signed a collective-bargaining agreement. Rather, the Respondent relies on *Klein's Golden Manor*, 214 NLRB 807 (1974) to argue that no violation occurred while the employees were in training because at the time of recognition a representative complement of employees was already employed. The argues misses the point. The case cited is legally and factually distinguishable. First, *Klein's Golden Manor,* which was decided several years before *Herman Bros.* and *Hilton Albany Inn*, does not refer to the twofold test applied by the Board in those later cases.[45] Indeed, *Klein's Golden Manor* does not even

[45] In fact, *Klein Golden Manor* makes no mention of *Hayes Coal Co.,* 197 NLRB 1162, 1163 (1972), decided two years before, which set out the twofold test. See also, *British Industries Company,* 218 NLRB 1127, 1141 (1975), decided one year after *Klein's*, which points out that *Klein's* makes no mention of *Hayes.*

address the issue of whether a violation occurs when an employer, who is not engaged in normal business operations, recognizes a union: an issue squarely decided by *Herman Bros.* and its progeny. A careful reading of *Klein*'s discloses that it was principally concerned with whether the employer had a representative complement in his employ at the time recognition was grant, which is not at issue here. Thus, the Respondent's reliance on *Klein's* for that proposition is nothing more than a straw man argument.

Next, the employees there, unlike here, were not involved in training, but were performing preparatory work to ready the business for normal operations. There was no evidence in *Klein's* reflecting that the new hires had to be trained to do their jobs or that they were only into their second day of training when the union was recognized. Finally, and most important, there, unlike here, there was no other labor organization that enjoyed a presumption of majority status or – for that matter – was even seeking to organize the employees at the time recognition was granted. That, coupled with the lack of any other evidence of unlawful assistance, led the administrative law judge there to dismiss the complaint. No such evidence is lacking here. For all of these reasons, I therefore find that *Klein's Golden Manor* is inapposite.

Other probative evidence also shows that NCS subtlety coerced the new hires to support FOPE and thereby unlawfully assisted that union. There is no evidence, nor argument, that any of the trainees hired on December 7, 2001, inquired or sought to be represented by a union prior to being introduced to Ron Borges on December 18. To the contrary, the undisputed evidence shows that NCS wanted and needed a union at the GM Baltimore assembly plant yard. The undisputed evidence also shows that in furtherance of this objection, Charlie Johnson initiated contact with Ron Borges, explained the situation to him, and invited him to speak to the newly hired trainees. In the meantime, Charlie Johnson had his attorneys prepare a draft contract bearing FOPE's name, which was essentially the same contract that NCS and FOPE later signed. Thus, the evidence shows that Charlie Johnson initiated the effort to have the NCS workforce unionize and set the stage for FOPE to become the representative of the new hired employees.

The very next day, which was the second day of new hire training, Charlie Johnson gathered the group of trainees. It is important to note that some of the new trainees were unemployed at the time of hire, some of them with jobs were looking for a higher wage and/or a more stable work environment, and all had been told that their starting wage would be between $13-15 an hour. On December 18, Charlie Johnson introduced himself, described his background, and told them that "they had a decent chance to make a decent living and that they needed to save some money."[46] (Tr. 175.) He also told them that they would be making $11.00 an hour and not $13-15.00. That piece of information surprised and disappointed the new hires. Johnson proceeded to tell the employees that he had "a friend that came in from Detroit and that he would like to speak to you." (Tr. 175.) He explained that he had worked with the man before, that he was a really nice guy, and that the trainees should give him their full attention. (Tr. 241.) The evidence shows that Charlie Johnson turned over to Ron Borges a vulnerable, and slightly deflated audience of newly hired employees, who had no alternative but to follow the owner's request to sit and listen to his old friend, because if nothing else he was paying them to do it.

The evidence shows that Charlie Johnson left the room and Borges introduced himself

[46] Interestingly, neither Charlie Johnson or anyone else testified that he told the group that it was his business practice to give inner-city, disadvantaged people, an opportunity to improve their life styles, and that he had come to Baltimore and contacted MOED to do the same.

as a union representative. He told the new hires how his union had helped other employees and asked the group what they would like to see in a contract. Predictably, they told him that they were unhappy with $11 an hour and that they wanted $12. (Tr. 244, 634.) He told them he though he could do better and suggested $11.50 an hour with a 50 cents increase each year thereafter. The new hires signed authorization cards, Borges went to talk to Johnson, and 45 minutes later he returned to tell them the group that he had gotten them $11.50 an hour and that he would give them the rest of the details later.[47] Thus, the evidence shows that Borges capitalized on the "opportunity" that Charlie Johnson gave him to talk to the new hires.

The manner in which Charlie Johnson and Ron Borges orchestrated the introduction of FOPE left the new hired trainees no other options. There was no mention of any other union, and there is no evidence that the new hires were even aware that the Teamsters were seeking to represent NCS employees, because the new hires did not arrive at the GM plant until December 28, 2001. By then, recognition of FOPE was a done deal and a collective-bargaining agreement had already been signed.[48] For all they knew, FOPE was the only act in town and Ron Borges, old friend of Charlie Johnson, was their only hope of getting back part of the starting wage that they thought they were going to receive. While Charlie Johnson did not threaten the new hires if they did not select FOPE or promise them anything if they did, the coercion was subtle because he set up the introduction in such a way that it left the new hires with no alternative but to agree to be represented by FOPE. I find that there is sufficient circumstantial evidence to support a reasonable inference that NCS subtly coerced the new hires to select FOPE and unlawfully assisted that union in obtaining the support of these employees.

When a company extends recognition to a union that does not represent an uncoerced majority of employees in an appropriate unit, the employees cannot be said to have freely selected the union, and the recognition and any contract flowing from it constitute unlawful interference with employee Section 7 rights in violation of Section 8(a)(1) of the Act and unlawful assistance in violation of Section 8(a)(2) of the Act. *Anaheim Town & Country Inn,* 282 NLRB 224, 229 (1986). The evidence viewed as a whole shows that Charlie Johnson did more than simply allow FOPE to address the NCS new hires on company time. He initiated contact with the union, he invited Borges to address the new hires, he had a draft contract prepared bearing FOPE's name even before Borges got to Baltimore, he called a group meeting the very next day at which time he advised the new hires that their starting wage would be less than what they were expecting, he introduced Borges as a nice guy and old friend, who warranted their attention, and he left the room. Borges, who had discussed the situation with Johnson the day before, knew what to do and took it from there. Within two hours, he collected signed authorization cards, obtained a 50 cent raise for the new hires, and was on his way to an authorization card check that Charlie Johnson had arranged at office of NCS' attorney. By the end of the day, a recognition agreement was signed and by the end of the following day a tentative collective-bargaining agreement was reached, essentially along the lines of the draft that Johnson had ordered prepared two days earlier. The new hires never had the benefit of hearing from any other union least of all the Teamsters. I find that under the particular facts of

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[47] Borges had to leave to go to Attorney McGuire's office for an authorization card check that had been arranged by Charlie Johnson after Borges made a verbal demand for recognition. (Tr. 703-704.)

[48] The unrebutted testimony of Alan Reardon is that he first saw the Teamster on the first day he reported to the GM plant and was told by NCS management not to worry about them because they were upset about Leaseway losing the contract with GM, but NCS had the contract and so he should worry about the Teamsters. (Tr. 637.)

this case, and based on the totality of circumstances, that NCS subtly coerced the new hires to select FOPE and unlawfully assisted that union in obtaining the support of these employees in violation of Section 8(a)(2) and (1) of the Act.

2. Unlawful FOPE contract provisions

In addition, the undisputed evidence shows that the collective-bargaining agreement between the Respondent and FOPE contained a union-security agreement and dues-check off provision that were enforced. Accordingly, I find that the Respondent's conduct violated Section 8(a)(3) of the Act. *A.M.A. Leasing,* supra, 283 NLRB at 1024; *British Industries Company,* 218 NLRB 1127, fn. 3, (1975).

C. Local 713

1. Unlawful assistance and recognition of Local 713

The amended complaint further alleges that the Respondent unlawfully assisted and recognized Local 713 in violation of Section 8(a)(2) of the Act. There is compelling undisputed evidence to support this allegation. Soon after Charlie Johnson learned from Borges that FOPE had to withdraw as the exclusive bargaining representative of the NCS employees because of the Article 21 proceedings, he phoned his attorney, Michael McGuire. Johnson testified that he was concerned because GM had told him at every single meeting that NCS must have a union. (Tr. 109-111.) He realized that the same disqualifying issue would arise if another AFL-CIO union sought to represent the NCS employees, so he asked McGuire if he could find a non-AFL-CIO union. (Tr. 711.) Thus, the evidence shows that rather than recognize the Teamsters, who had presumed continued majority status, NCS searched for a particular union to meet the conditions established by GM, without running afoul of the AFL-CIO.

The undisputed evidence shows that McGuire, acting as NCS' attorney on the instructions of Charlie Johnson, phoned Steve Maritas of Local 713, "asked him whether or not he was interested, his union might be interested, in being introduced to the New Concept employees, and [Maritas] said he was." (Tr. 711.) There is no evidence that Local 713 or Maritas had even heard of NCS before McGuire made the phone call, let alone ever expressed any interest in representing them prior to getting the call.

The undisputed evidence shows that a meeting was held at McGuire's office between Charlie Johnson, Maritas, and McGuire, which lasted about an hour. At that meeting Johnson told Maritas that he wanted to give him the opportunity to talk with the NCS employees to see if they wanted to be part of his union. (Tr. 114.) He also told Maritas that "he could go on the property and talk to the people." (Tr. 114.) In the meantime, the Teamsters, who had presumed continued majority status, were still leafleting outside the gates of GM plant. Thus, the evidence shows that (1) NCS recruited Local 713 to represent its employees; and (2) the Respondent gave Local 713 unrestricted access to its facilities and employees for the purpose of soliciting them to join Local 713, while at the same time denying access to the officials and agents of the Teamsters.[49]

[49] Charlie Johnson's assertion that all the Teamsters needed to do was take the initiative to call him to arrange a meeting with the NCS employees is disingenuous and incredulous. Up until this point, he had ignored or rebuffed all of the Teamsters' telephonic, written, and verbal requests to sit down and talk. In contrast, he had his attorney search for Local 713, initiate contact, and setup a meeting in order to give Maritas the "opportunity" to talk to the NCS

Continued

Notably, the evidence also shows that prior to Maritas' first visit to the GM plant, Charlie Johnson informed the NCS employees that FOPE would no longer represent them. Johnson told them that although he never really thought that they needed a union because he planned on being fair with them, "it would work out better for other contracts that they were going to try to get in the future if we [they] were unionized." (Tr. 641.) Johnson therefore planted the seed that it was in their best interest to be represented by a union: a thought which did not originate with the employees themselves.

When Maritas first appeared on the property, some of the employees, like Richard Jenkins, assumed that he was the replacement for FOPE. (Tr. 791.) Maritas did not disabuse them of that notion. The unrebutted evidence shows that he told them he had heard that they needed a union in order to keep the GM contract. (Tr. 791.) Some employees, like Alan Reardon, were skeptical of Maritas from the beginning.[50] Others, like Sean Phelps, wanted to hear what the Teamsters' had to offer, but were afraid to voice their preference. (Tr. 645, 790.) Thus, the evidence shows that when Maritas began soliciting cards for Local 713, three things were readily apparent: (1) Charlie Johnson knew that NCS needed a non-AFL-CIO union in order to continue with the GM contract; (2) the NCS employees had been told by Johnson that they would be better off with a union; and (3) Maritas appeared to the employees as the heir apparent to FOPE, which left them with virtually no other alternatives from which to chose. That impression was underscored on March 15, when Charlie Johnson stood by, while the NCS employees under the direction of Maritas tore up the Teamsters' flyers in the presence of the Teamsters' officials. I find that the evidence viewed as a whole supports a reasonable inference that NCS employees were subtly coerced into supporting Local 713.

I find based on the evidence viewed as a whole that Charlie Johnson recruited Steve Maritas and Local 713; granted him unrestricted access to its facilities and employees in order to solicit members, while denying access to the Teamsters; and subtly coerced the NCS employees to support Local 713 by pointing out to them that it was in their best interest to join a union and then by limiting their options to choose to the union that he recruited. For all of these reasons, I find that the Respondent violated Section 8(a)(2) of the Act by unlawfully assisting and recognizing Local 713.

2. Unlawful Local 713 contract provisions

In addition, the undisputed evidence shows that the collective-bargaining agreement between the Respondent and Local 713 contained union-security and dues-checkoff provisions that were enforced. Accordingly, I find that the Respondent's conduct violated Section 8(a)(3) of the Act. *A.M.A. Leasing,* supra, 283 NLRB at 1024; *British Industries Company,* 218 NLRB 1127, fn. 3, (1975).

D. *Unlawful Statements*

The complaint as amended alleges, and the credible evidence shows, that on or about January 3, 2002, Charlie Johnson told the newly hired NCS employees to ignore the Teamsters and that he had hired an off-duty police officer to patrol the yard for the employees'

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employees.

[50] The undisputed evidence shows that when Alan Reardon finally did complain about the apparent "closeness" between Local 713 and the Respondent, he was questioned by Operations Manager Charlie Ross, and later that day, he was offered a nonunion position in management. (Tr. 650.) Reardon, a former United Steelworkers member, testified that he drew his own conclusions from there. (Tr. 651.)

protection. The credibly evidence further shows that he also told the employees that the Teamsters had put Leaseway out of business because of the high wages the company had to pay and that he, Johnson, could not afford to run the NCS like that, which is why they were receiving $11.50. I agree with the General Counsel that these statement had a reasonable tendency to interfere with, restrain or coerce the NCS employees in the free exercise of their Section 7 rights to join, support or assist (or not to do so) the Teamsters, who enjoyed a presumption of continued majority status of the bargaining unit employees, while at the same time the Respondent unlawfully assisted and granted premature recognition to FOPE. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act by this conduct.

The complaint as amended further alleges, and the credible evidence shows, that in late February – early March, Charlie Johnson told the NCS employees that FOPE would no longer represent them. He told them that although he did not believe that they needed a union because he intended to treat them fairly, it was in their best interest to be unionized because it would enable NCS to be awarded other contracts. The credible evidence shows that when Alan Reardon proposed contacting the United Steelworkers about representing the NCS employees, Charlie Johnson stated that he wanted to have some control over what union came in and he had some ideas about how to handle it. Johnson subsequently recruited Local 713 to represent the NCS employees and granted that union unrestricted access to the facilities and premises, while denying access to the Teamsters. I find that these statements by Charlie Johnson tended to coerce the employees to accept a union approved by Johnson, thereby interfering with their Section 7 rights to support or not to support a union, particularly since the notion of union representation or continued union representation was not initiated by the employees or any one of them. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act by this conduct.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The union, Federation of Private Employees (FOPE) is a labor organization within the meaning of Section 2(5) of the Act.

4. The union, International Brotherhood of Trade Unions, Local 713 (Local 713) is a labor organization within the meaning of Section 2(5) of the Act.

5. The following unit is appropriate for collective bargaining purposes:

> INCLUDED: All full-time and regular part-time employees who are utilized by the Company in the movement of motor vehicles from motor vehicle manufacturing facilities and/or storage areas and/or loading and unloading of those motor vehicles.
>
> EXCLUDED: All other employees, office clerical employees, guards And supervisors as defined in the Act.

6. The Union is the Section 9(b) collective-bargaining representative of the above-described unit employees.

7. The Respondent is the successor employer of the employees in the above-described unit.

8. The Respondent violated Section 8(a)(3) of the Act by unlawfully refusing to hire its predecessor's employees, i.e., the Leaseway employees; by entering into a collective-bargaining agreement with FOPE and with Local 713 that a contained a union-security and dues-checkoff provision that was enforced.

9. The Respondent violated Section 8(a)(5) of the Act by unlawfully refusing to recognize and bargain with the Union and by unilaterally changing pay, benefits, and terms and conditions of employment as provided in the predecessor's collective-bargaining agreement with the Union.

10. The Respondent violated Section 8(a)(2) of the Act by engaging in the following conduct:

(a) Subtly coercing the NCS employees to select FOPE.

(b) Granting FOPE unrestricted access to its facilities and employees in order to solicit members, while denying access to the Teamsters.

(c) Unlawfully assisting and granting recognition to FOPE.

11. The Respondent violated Section 8(a)(2) of the Act by engaging in the following conduct:

(a) Subtly coercing the NCS employees to select Local 713.

(b) Granting Local 713 unrestricted access to its facilities and employees in order to solicit members, while denying access to the Teamsters.

(c) Unlawfully assisting and granting recognition to Local 713.

12. The Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Telling its employees to ignore the Teamsters and that the Respondent had hired an off-duty police officer to patrol the yard for the employees' protection;

(b) Telling its employees that the Teamsters had put Leaseway out of business because of the high wages the company had to pay and that the Respondent could not afford pay those wage rates; and

(c) Telling its employees that it was in their best interest to belong to a union, but that the Respondent wanted some control over which union was selected.

13. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it is necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily refused to hire the former Leaseway employees, I shall order the Respondent to immediately offer to these employees, positions for which they would have been hired, absent the Respondent's unlawful discrimination, beginning with the employees listed below who expressed a desire to work for the Respondent in December 2001, or, if those positions no longer exist, to substantially equivalent positions, discharging if necessary any employees hired to fill those positions. The employees listed below shall be made whole for any loss of earnings they may have suffered due to the discrimination practiced against them. Backpay shall be computed in accordance with the formula approved *F.W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as computed in *New Horizon for the Retarded,* 283 NLRB 1173 (1987).

Having found that the Respondent unlawfully refused to bargain collectively with the Union, I shall order that the Respondent, on request, recognize and bargain with the Union concerning wages, hours, benefits, and other terms and conditions of employment. In addition, and in order to remedy the Respondent's unlawful unilateral changes to wages, benefits, and terms and conditions of employment that went into effect on January 1, 2002, the day it took over the GM yard operations, I shall order the Respondent to rescind any changes in employees' terms and conditions of employment unilaterally effectuated and to make the employees whole by remitting all wages and benefits that would have been paid absent the Respondent's unlawful conduct, until the Respondent negotiates in good faith with the Union to agreement or to impasse. This remedial measure is intended to prevent the Respondent from taking advantage of its wrongdoing to the detriment of the employees and to restore the status quo ante thereby allowing the bargaining process to get under way. *U.S. Marine Corp.,* 944 F.2d 1305, 1322-1323 (7th Cir. 1991). Employees shall be made whole in the manner prescribed in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizon for the Retarded,* supra. The Respondent shall make whole its unit employees by making all delinquent employee benefit fund contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.,* 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Brad Plumbing & Heating,* 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service,* supra, with interest as prescribed in *New Horizons for the Retarded,* supra. To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

Having found that the Respondent unlawfully assisted and recognized Local 713 and unlawfully executing and enforcing a collective-bargaining agreement with Local 713 containing a union security and dues checkoff provision, I shall order the Respondent immediately to withdraw recognition from Local 713 and cease giving effect to the March 21, 2002 collective-bargaining agreement between the Respondent and Local 713, including renewals, extensions, modifications, and to cancel it entirely.

Having found that the Respondent unlawfully assisted and recognized FOPE and unlawfully executing and enforcing a collective-bargaining agreement with FOPE containing a

union security and dues checkoff provision, a withdrawal of recognition remedy similar to that ordered with respect to Local 713 would be in order, but for the evidence showing that FOPE has already disclaimed interest in representing the unit employees and its collective-bargaining agreement with the Respondent has been nullified by the parties thereto.

Having found that the Respondent unlawfully coerced the NCS employees to support both FOPE and Local 713, I shall order the Respondent to reimburse, with interest, all present and former NCS employees for all initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the terms of the union security and dues checkoff provisions contained in the collective-bargaining agreements between the Respondent and these unions.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[51]

ORDER

The Respondent, New Concept Solutions, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire bargaining unit employees of Leaseway Motorcar Transport Co., the predecessor employer, because of their union-represented status in the predecessor's operation, or otherwise discriminating against these employees to avoid having to recognize and bargain with the Freight Drivers and Helpers Union No. 557, a/w International Brotherhood of Teamsters, AFL-CIO.

(b) Refusing to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> INCLUDED: All full-time and regular part-time employees who are utilized by the Company in the movement of motor vehicles from motor vehicle manufacturing facilities and/or storage areas and/or loading and unloading of those motor vehicles.
>
> EXCLUDED: All other employees, office clerical employees, guards And supervisors as defined in the Act.

(c) Unilaterally changing wages, hours, and other terms and conditions of employment without first giving notice to and bargaining with the Union about these changes.

(d) Assisting and recognizing the Federation of Private Employees and/or International Brotherhood of Trade Unions, Local 713, as the exclusive representative of its employees.

(e) Subtly coercing its employees to select Federation of Private Employees and/or

[51] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

International Brotherhood of Trade Unions, Local 713, as the exclusive representative of its employees.

(f) Granting Federation of Private Employees and/or International Brotherhood of Trade Unions, Local 713, unrestricted access to its facilities and employees in order to solicit members, while denying access to the Freight Drivers and Helpers Union No. 557, a/w International Brotherhood of Teamsters, AFL-CIO.

(g) Enforcing and/or giving effect to the collective-bargaining agreements with the International Brotherhood Trade Unions, Local 713.

(h) Telling its employees to ignore the Teamsters Union and that the Respondent has hired an off-duty police officer to patrol the yard for the employees' protection;

(i) Telling its employees that the Teamsters Union had put Leaseway out of business because of the high wages the company had to pay and that the Respondent could not afford pay those wage rates; and

(j) Telling its employees that it was in their best interest to belong to a union, but that the Respondent wanted some control over which union was selected.

(k) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the date of this Order, offer employment to the following named former unit employees of the predecessor, Leaseway Motor Car Transport, Co., who would have been employed by the Respondent but for the unlawful discrimination against them, or, if such positions no longer exist, in substantially equivalent positions, without prejudice to their seniority and other rights and privileges enjoyed, discharging if necessary any employees hired in their place. In addition, make whole the following named employees for any loss of earnings and other benefits they may have suffered by reason of the Respondent's unlawful refusal to hire them.

Gil Brooks, Sr.	Harry Smith
Victor Estrada	Al Sturtevant
Sharon Evans,	Charles Sussan
James Holland, Jr.	Ricky Swick
Howard Kohlahafer	Roger Vandevender
Jeff Kotch	William C. Whitelaw
John H. Moe	James A. Wilkes
David Rawls	Norman Yuille

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Recognize and, on request, bargain collectively with the Union as the exclusive

representative of the Respondent's unit employees, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

(d) Notify the Union in writing that it recognizes the Union as the exclusive representative of its unit employees under Section 9(a) of the Act and that it will bargain with it concerning the terms and conditions of employment for employees in the appropriate unit.

(e) On request of the Union, rescind any departures from terms and conditions of employment that existed immediately prior to the Respondent's takeover of the predecessor's Leaseway Motor Car, Co. operation, retroactively restoring preexisting terms and conditions of employment, including wage rates and benefit plans, and make whole the bargaining unit employees by remitting all wages and benefits that would have been paid absent such unilateral changes from January 1, 2002, until it negotiates in good faith with the Union to agreement or to impasse. Nothing in this order shall be construed to authorize or require the Respondent to withdraw any improved condition or to result in the employees' loss of any beneficial unilateral change.

(f) Withdraw and withhold all recognition from Local 713 as the exclusive collective-bargaining representative of its employees.

(g) Reimburse with interest all present and former employees for all initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the terms of dues checkoff and union security provisions of the collective-bargaining agreements between the Respondent and FOPE and the Respondent and Local 713.

(h) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix"[52] to all employees in the above-described unit who were employed by the Respondent at its Baltimore, MD facility at any time from the onset of the unfair labor practices found in this case until the completion of these employees' work at that jobsite. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 12, 2003

_____
C. Richard Miserendino
Administrative Law Judge

[52] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "MAILED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "MAILED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."